This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 13 *March,* 1973.

New South Wales

ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1973.

An Act to establish a District Court of New South Wales; to provide for the appointment of, and the powers, authorities, duties and functions of, Judges and other officers of the Court; to empower the Court to hear and dispose of certain civil and criminal proceedings; to abolish the several District Courts and Courts of Quarter Sessions; to repeal the District Courts Act, 1912, and certain other Acts; to amend the Crimes Act 1900 and certain other Acts; and for purposes connected therewith.

BE

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "District Court Act, 1973".

Commencement.

2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–7.

PART II.—THE DISTRICT COURT OF NEW SOUTH WALES—*ss.* 8–18.

DIVISION 1.—*Establishment of the Court*—*ss.* 8–11.

DIVISION 2.—*Judges*—*ss.* 12–18.

PART III.—THE CIVIL JURISDICTION OF THE COURT —*ss.* 19–164.

DIVISION 1.—*Officers and General Provisions*—*ss.* 19–43.

Subdivision 1.—*Registrars*—*ss.* 19–24.

Subdivision 2.—*Bailiffs*—*ss.* 25–30.

Subdivision 3.—*Sittings of the Court*—*ss.* 31–39.

Subdivision

Subdivision 4.—*Change of venue*—*s.* 40.

Subdivision 5.—*Parties*—*ss.* 41, 42.

Subdivision 6.—*Right of appearance*—*s.* 43.

DIVISION 2.—*Actions*: *Jurisdiction*—*ss.* 44–51.

Subdivision 1.—*General jurisdiction in relation to actions*—*ss.* 44–48.

Subdivision 2.—*Splitting and dividing of causes of action and abandonment*—*ss.* 49, 50.

Subdivision 3.—*Jurisdiction by consent*—*s.* 51.

DIVISION 3.—*Actions*: *Procedure*—*ss.* 52–83.

Subdivision 1.—*General*—*s.* 52.

Subdivision 2.—*Commencement of actions*—*ss.* 53–55.

Subdivision 3.—*Defences*—*s.* 56.

Subdivision 4.—*Order for judgment and judgment by default*—*ss.* 57, 58.

Subdivision 5.—*Judgment by confession or agreement*—*ss.* 59–62.

Subdivision 6.—*Arbitration*—*s.* 63.

Subdivision 7.—*Witnesses, evidence and ancillary matters*—*ss.* 64–70.

Subdivision 8.—*Trial and jury*—*ss.* 71–80.

Subdivision 9.—*Judgments and orders*—*ss.* 81–83.

DIVISION 4.—*Actions*: *Enforcement of Judgments*—*ss.* 84–114.

Subdivision 1.—*General*—*ss.* 84–86.

Subdivision 2.—*Payment of judgment debt*—*ss.* 87–89.

Subdivision 3.—*Examination of judgment debtor*—*ss.* 90–96.

Subdivision

Subdivision 4.—*Attachment of debts*—*ss.* 97–106.

Subdivision 5.—*Writ of execution*—*ss.* 107–112.

Subdivision 6.—*Writ against the person*—*ss.* 113, 114.

DIVISION 5.—*Actions*: *Interpleader*—*ss.* 115–118.

DIVISION 6.—*Actions*: *Costs*—*ss.* 119–124.

DIVISION 7.—*Actions*: *New Trial and Appeal*—*ss.* 125–131.

DIVISION 8.—*Miscellaneous Jurisdiction*—*ss.* 132–142.

Subdivision 1.—*General*—*s.* 132.

Subdivision 2.—*Possession of land and equity proceedings*—*ss.* 133–139.

Subdivision 3.—*Temporary injunctions*—*ss.* 140–142.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court*—*ss.* 143–148.

Subdivision 1.—*Transfer of proceedings from Supreme Court*—*ss.* 143, 144.

Subdivision 2.—*Transfer of proceedings to Supreme Court*—*ss.* 145–148.

DIVISION 10.—*Miscellaneous Provisions*—*ss.* 149–160.

DIVISION 11.—*Rules*—*ss.* 161–164.

PART IV.—THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT—*ss.* 165–175.

PART V.—GENERAL PROVISIONS—*ss.* 176–179.

PART VI.—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS—*ss.* 180–194.

DIVISION 1.—*General*—*ss.* 180–183.

DIVISION

DIVISION 2.—*The Civil Jurisdiction of the Court—ss.* 184–191.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court—ss.* 192–194.

SCHEDULES.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: general.

"action" means action in the Court, but does not include any proceedings under Division 8 of Part III or under Part IV;

"admitted set-off", in relation to an action, means set-off admitted by the plaintiff in the statement of claim lodged by him to commence the action or, where a defendant pleads a cross-claim, by the defendant in the prescribed notice of the cross-claim;

"barrister" means person who is on the roll of barristers in the Supreme Court;

"Chief Judge" means Chief Judge of the Court;

"corporation" includes any body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person;

"file", in relation to any proceedings, means lodge with the registrar for the proper place in relation to the proceedings, for inclusion in the record of the Court;

"Judge" means Judge of the Court;

"judgment", in relation to an action, means judgment given or entered up in the action;

"land" includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate

or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity;

"minor" means person under the age of eighteen years;

"officer", in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"prescribed" means prescribed by this Act or the rules;

"proceedings" means proceedings in the Court;

"proclaimed place" means place for the time being specified in a proclamation under section 31;

"proper place", in relation to any proceedings in the Court in its civil jurisdiction—

(a) where there has been no change of venue in respect of the proceedings—means the proclaimed place at which the proceedings were commenced;

(b) where there has been only one change of venue in respect of the proceedings—means the proclaimed place to which the venue was changed; or

(c) where there have been two or more changes of venue in respect of the proceedings—means the proclaimed place to which the venue was last changed;

"registry", in relation to a proclaimed place, means the office of the registrar for the proclaimed place;

"rules" means rules made under this Act;

"solicitor"

"solicitor" means attorney, solicitor and proctor of the Supreme Court;

"statement of claim" means ordinary statement of claim or statement of liquidated claim, as referred to in section 53;

"the Court" means the District Court of New South Wales;

"the registrar", in relation to any proceedings, means the registrar for the proper place in relation to the proceedings;

"writ against the person" means writ against the person issued under section 113;

"writ of execution" means writ of execution issued under section 107.

(2) A reference in this Act—

(a) to the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under section 58, 60 or 61; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with section 58, 60 or 61.

(3) A reference in this Act to the commencement of proceedings at a proclaimed place (however expressed) is a reference to the commencement of those proceedings by the lodging of the statement of claim or other document commencing the proceedings with the registrar for that place.

(4) A reference in this Act to the issue of a document at a proclaimed place (however expressed) is a reference to the issue of that document by the registrar for that place.

(5) A reference in this Act to a stay of proceedings (however expressed) includes a reference to a stay of enforcement of the judgment arising from the proceedings.

(6) A reference in this Act to a stay of enforcement of a judgment includes a reference to a stay of the issue of—

(a) an examination summons under section 91 (1);

(b) a warrant under section 92 (4); and

(c) a charging order under the Judgment Creditors' Remedies Act, 1901,

in respect of the judgment debt.

Interpretation: nearest proclaimed place.

5. (1) A reference in this Act to the nearest proclaimed place to another place (however expressed) is a reference to the proclaimed place the distance between the principal registry for which and that other place is shorter than the distance between any other principal registry and that other place.

(2) In subsection (1)—

"distance" means distance computed in accordance with the rules;

"principal registry", in relation to a proclaimed place, means—

(a) where there is only one registry for the proclaimed place—that registry; or

(b) where there are two or more registries for the proclaimed place—the registry specified in, or determined in accordance with, the rules as being the principal registry for the proclaimed place.

(3) The Governor may, at his discretion, by proclamation, specify an address or a place at which the principal registry for a proclaimed place shall be deemed to be situated,

and

and that principal registry shall, for the purposes of subsection (1), be deemed to be situated at the address or place so specified, notwithstanding that it may be situated elsewhere.

Order on terms. No. 52, 1970, s. 21.

6. Where under this Act or the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

Application of certain provisions of this Act.

7. The provisions of Part III and Division 2 of Part VI and the rules—

(a) apply to and in respect of proceedings in the Court in its civil jurisdiction; and

(b) except as provided by Part IV, do not apply to or in respect of proceedings in the Court in its criminal and special jurisdiction.

PART II.

The District Court of New South Wales.

Division 1.—*Establishment of the Court.*

The Court.

8. (1) There shall be a District Court of New South Wales.

(2) The Court shall be a court of record.

(3) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

9. (1) The Court shall have a civil jurisdiction, consisting of— Jurisdiction of the Court generally.

(a) its jurisdiction conferred by Part III; and

(b) the jurisdiction conferred by or under any other Act or law on the Court, not being its jurisdiction referred to in subsection (2).

(2) The Court shall have a criminal and special jurisdiction, consisting of—

(a) its jurisdiction conferred by Part IV; and

(b) the jurisdiction conferred by or under any other Act or law on the Court in its criminal and special jurisdiction, its criminal jurisdiction or its special jurisdiction.

10. The Court, wherever sitting, shall, subject to this Act, have jurisdiction throughout the whole of New South Wales. State-wide jurisdiction.

11. (1) All proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the Jury Act, 1912, be heard and disposed of before a Judge, who shall constitute the Court. Single Judge to constitute the Court. No. 52, 1970, s. 40.

(2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before a registrar or other officer of the Court.

DIVISION 2.—*Judges.*

12. The Court shall be composed of a Chief Judge and such other Judges as the Governor may from time to time appoint. Composition of the Court.

13.

13. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment and qualification of Judges.

(2) A person is qualified to be appointed as a Judge if he is—

(a) a barrister of not less than five years' standing;

(b) a solicitor of not less than seven years' standing; or

(c) a barrister or a solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(3) A barrister or solicitor shall not be appointed to be a Judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately preceding his appointment.

(4) The Governor may, by the commission of a person's appointment as a Judge or by a subsequent commission under the public seal of the State, appoint a Judge to be Chief Judge.

(5) Subject to subsection (6), the Chief Judge shall hold office as Chief Judge so long as he holds office as a Judge.

(6) With the approval of the Governor, the Chief Judge may resign his office as Chief Judge without resigning his office as a Judge.

(7) A Judge shall, while he holds office as such, be deemed to have been appointed a justice of the peace.

14. (1) Subject to the Judges Retirement Act, 1918, a Judge shall hold his office during ability and good behaviour. Judge's tenure.

(2) The Governor may remove a Judge for inability or misbehaviour.

(3) A Judge shall not be removed from office under subsection (2) unless, before being so removed, he has been given twenty-one days' notice of the intention to remove him and he has within that time been given an opportunity of making representations to the Governor and of being heard before the Governor in Council.

(4) A Judge shall not practise as a barrister or solicitor, or be directly or indirectly concerned in the practice or profession of a barrister or solicitor, or be capable of being summoned, or elected, or of sitting, as a member of Parliament.

15. (1) The annual salary— Salaries.

(a) of the Chief Judge shall be $24,650; and

(b) of any other Judge shall be $22,580.

(2) The salary payable to each Judge in accordance with subsection (1), together with any statutory or other allowance, shall be paid to him so long as he continues to hold office.

16. (1) Where there is a vacancy in the office of Chief Judge, or the Chief Judge is absent from his duties, the senior of the other Judges willing to act as Chief Judge shall, if there is no Acting Chief Judge appointed under section 17, act as Chief Judge, and shall, while so acting, have the powers and authorities and fulfil the duties of the Chief Judge. Vacancy in office of or absence of Chief Judge.

(2)

(2) For the purposes only of subsection (1)—

(a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act or the District Courts Act, 1912, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge; and

(b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commissions or, failing any such assignment, according to the order of their being sworn.

Acting Chief Judge.

17. (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his duties.

(2) While holding office, the Acting Chief Judge shall have the powers and authorities and fulfil the duties of the Chief Judge, and shall receive a salary and allowances at the rate provided for the Chief Judge.

Acting Judges.

18. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding six months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed, for the time and subject to the conditions or limitations specified in his commission, shall have the powers and authorities and fulfil the duties of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.

PART

PART III.

THE CIVIL JURISDICTION OF THE COURT.

DIVISION 1.—*Officers and General Provisions.*

Subdivision 1.—*Registrars.*

Registrars.

19. (1) There shall be a registrar of the Court for each proclaimed place.

(2) The registrar for Sydney, and for any other proclaimed place specified for the purposes of this subsection by the Minister by order published in the Gazette, shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(3) The registrar for any proclaimed place not referred to in subsection (2) shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at that place, or if there is no such person, shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at some other place specified for the purposes of this subsection by the Minister by order published in the Gazette.

Consent orders.

20. Except where otherwise expressly provided by this Act or the rules, the registrar for the proper place in relation to any proceedings may exercise the power of the Court to make any order in the proceedings which the Court may make, being an order consented to—

(a) by the parties to the application for the order; and

(b) by any other persons who will be required to comply with the order or to suffer anything to be done under the order.

21.

Powers of the registrar for Sydney.

21. (1) The registrar for Sydney may, except where a Judge otherwise orders or the rules otherwise provide, exercise, in or in respect of proceedings in relation to which the proper place is Sydney—

(a) the powers of the Court under section 68 (2); and

(b) the powers of the Court to make—

(i) orders for substituted service of process;

(ii) orders in respect of the joinder, misjoinder and nonjoinder of parties;

(iii) orders in respect of the amendment of documents;

(iv) orders that the trial of proceedings be expedited; and

(v) orders that proceedings be heard together.

(2) The registrar for Sydney shall have, and may exercise concurrently with the registrar for any other proclaimed place specified for the purposes of this subsection by the Governor by order published in the Gazette, such of the powers, authorities, duties and functions of the registrar for that other proclaimed place as may be so specified.

(3) Any power, authority, duty or function conferred upon the registrar for Sydney by this section is additional to those otherwise conferred upon him.

Assistant registrars.

22. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint one or more assistant registrars for a proclaimed place.

(2) If the Governor by proclamation so directs, the person for the time being holding office as, or discharging the functions of, clerk of petty sessions for a place specified in the proclamation (whether or not that place is a proclaimed place) shall be an assistant registrar for the proclaimed place specified in the proclamation.

23.

Powers, etc., of assistant registrars.

23. (1) An assistant registrar for a proclaimed place shall have and may exercise and discharge such of the powers, authorities, duties and functions of the registrar for that place as may be specified in the rules for the purposes of this subsection.

(2) Any thing done or omitted to be done by an assistant registrar for a proclaimed place in the exercise or discharge of his powers, authorities, duties and functions under this Act shall, for the purposes of this Act, have the same effect as if it had been done or omitted by the registrar for that proclaimed place.

(3) Nothing in this section affects the powers, authorities, duties and functions of any registrar.

Registrar not to act as bailiff.

24. A registrar or an assistant registrar shall not be appointed or act as a bailiff or assistant bailiff.

Subdivision 2.—Bailiffs.

Bailiffs.

25. (1) There shall be at least one bailiff of the Court for each proclaimed place.

(2) If the Governor by proclamation so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place specified in the proclamation shall be a bailiff of the Court for such proclaimed place or proclaimed places as may be specified in the proclamation.

(3) The Chief Judge may, whether or not there is a bailiff for a proclaimed place by virtue of subsection (2), by order in writing appoint persons to be bailiffs of the Court for that proclaimed place.

Assistant bailiffs.

26. (1) A bailiff for a proclaimed place may, by instrument in writing, appoint a sufficient number of persons to be assistant bailiffs of the Court for that proclaimed place.

(2) An assistant bailiff may be dismissed or suspended from office as such by the Chief Judge or any successor of the bailiff who appointed him, as well as by that bailiff.

Duties of bailiffs and assistant bailiffs.

27. (1) A bailiff for a proclaimed place shall, if required by the Judge presiding thereat to do so, attend any sitting of the Court at that place.

(2) The bailiff for a proclaimed place shall, if required by the registrar for that place to do so—

(a) execute any warrant or writ issued out of the Court; or

(b) serve any other document,

whether or not that place is the proper place in relation to the proceedings to which that warrant, writ or other document relates, but where there are two or more bailiffs for that place, the warrant, writ or other document may be executed or served by any one of them.

(3) It shall be the duty of an assistant bailiff for a proclaimed place to assist the bailiff for that place, as directed by the bailiff.

(4) The bailiffs and assistant bailiffs shall in the execution of their duties conform to the rules and, subject to the rules, to the order and direction of any Judge.

(5) A bailiff who undertakes, or is required to undertake, the execution or service of any warrant, writ or other document shall, in respect thereof, be responsible to any party for all the acts and defaults of himself and of any assistant bailiff assisting him in like manner as the sheriff is responsible for the acts and defaults of himself and his officers.

Remuneration of bailiffs and assistant bailiffs.

28. (1) A bailiff appointed under section 25 (3) shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by a bailiff.

(2) An assistant bailiff shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by an assistant bailiff.

Bailiff not to act as registrar.

29. A bailiff or assistant bailiff shall not be appointed or act as a registrar or assistant registrar.

Obstructing bailiffs.

30. A person shall not assault, resist, interrupt or obstruct a bailiff or assistant bailiff in the exercise of any of his powers, authorities, duties or functions under this Act, or rescue or attempt to rescue any property seized or taken by a bailiff or assistant bailiff.

Penalty : $200 or imprisonment for six months, or both.

Subdivision 3.—*Sittings of the Court.*

Proclaimed places.

31. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its civil jurisdiction, and one of those proclaimed places shall be Sydney.

32.

32. (1) In this section, "year" means any period of twelve months ending on the thirty-first day of December. Directions as to sittings at proclaimed places.

(2) The Governor may, if in his opinion it is expedient to do so, by proclamation, direct that the Court shall, during a specified year, sit in its civil jurisdiction at a specified proclaimed place at specified times.

(3) Where there is no direction under subsection (2) that the Court shall, during a particular year, sit at a particular proclaimed place, the Chief Judge may, if in his opinion it is expedient to do so, by order in writing—

(a) direct that the Court shall, during that year, sit in its civil jurisdiction at that place at specified times; or

(b) direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place shall be continued by the Court sitting at some other proclaimed place specified in the order,

and, while a direction under paragraph (b) remains in force, the proceedings to which it relates shall, if continued, be continued accordingly.

(4) A direction under subsection (2) or (3) may be given in respect of a particular year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

(5) Where a direction is given under subsection (2) having effect, during a particular year, in respect of a particular proclaimed place, a previous direction—

(a) under subsection (3) (a) having effect, during that year, in respect of that proclaimed place; or

(b) under subsection (3) (b) having effect, during that year, in respect of proceedings the proper place in relation to which is that proclaimed place,

shall cease to have effect.

General provisions as to sittings.

33. (1) Subject to this Part, sittings of the Court shall be arranged by the Chief Judge.

(2) Subject to this Part—

(a) the Court may sit simultaneously at different proclaimed places;

(b) a Judge shall preside at such sittings of the Court at such proclaimed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court at the one proclaimed place.

(3) Where a sitting of the Court is directed to be held at a proclaimed place at a time specified under section 32, the registrar for that place shall—

(a) if the Chief Judge so directs; or

(b) if for any reason it is not practicable to be held at that time,

adjourn the sitting to such time as the Chief Judge nominates or, if the Chief Judge does not nominate a time, to such time as the registrar deems convenient.

Permanent substitution of proclaimed place.

34. (1) Where a place ceases to be a proclaimed place by reason of the revocation or amendment of a proclamation made under section 31, the Governor may, by proclamation, direct that—

(a) all proceedings (including proceedings before a registrar or any other officer of the Court) pending before the Court at that place; and

(b) any unsatisfied judgment or order of the Court in proceedings the proper place in relation to which was that place,

may

may be continued or enforced by the Court sitting at such other place as may be specified in the proclamation, and the proceedings shall, if continued, be continued accordingly or the judgment or order enforced accordingly, as the case may require.

(2) The Governor may, in any such proclamation, direct that the records of the Court at the place that has so ceased to be a proclaimed place shall be removed at or within a time stated in the proclamation to the registry for the other place specified therein.

(3) A direction under subsection (1) shall, for the purposes of the definition of "proper place" in section 4 (1), have effect as if it were an order for a change of venue under section 40 in respect of the proceedings to which it relates to the other place specified in the proclamation.

Temporary substitution of proclaimed place.

35. Where the Governor is of the opinion that it is inexpedient or impracticable for the Court to sit at a proclaimed place but that that place should continue to be specified in a proclamation under section 31, he may, by proclamation, direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place may be continued by the Court sitting at such other place as may be specified in the proclamation, and, while the direction remains in force, the proceedings shall, if continued, be continued accordingly.

Adjournment to another proclaimed place.

36. Where all parties appearing in proceedings the hearing of which has commenced before him in court consent, a Judge may direct that those proceedings be continued before him at another proclaimed place at which he is, under section 33 (2) (b), authorised to sit.

37. A Judge may make in chambers any order in respect of any proceedings which he could lawfully make in court and which he considers may be properly made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere. Chambers.

38. (1) Where in any proceedings a Judge reserves his judgment or his decision on any question of fact or law, he may— Reservation of judgment or decision.

(a) give his judgment or decision at the proper place in relation to those proceedings or at any other place at which he is authorised by this Act to hear or dispose of those proceedings, at any time, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a); or

(b) draw up in writing his judgment or decision, sign it and forward it to the registrar for that proper place.

(2) Where a registrar receives a judgment or decision forwarded to him under subsection (1) (b), he shall, after giving notice to the parties to the proceedings, read the judgment or decision at the place for which he is registrar at a convenient time specified in the notice, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a).

(3) A judgment or decision given by a Judge under subsection (1) (a) or read by a registrar under subsection (2) shall take effect on the day on which it is so given or read and shall be as valid as if given by the Judge at the hearing of the proceedings to which the judgment or decision relates.

39.

39. Nothing contained in or done under section 32, 35, 36 or 37 has, for the purposes of the definition of "proper place" in section 4 (1), effect as a change of venue, unless the Court orders a change of venue under section 40. Proper place not affected.

Subdivision 4.—Change of venue.

40. (1) Where— Change of venue.

(a) it appears that a fair or unprejudiced trial of any issue cannot otherwise be had; or

(b) for any other reason it appears expedient to the Court to do so,

the Court may, on terms, change the venue of any proceedings.

(2) Where the venue of any proceedings is changed, the registrar for the proclaimed place from which the venue is changed shall forthwith deliver or transmit by post the whole record of the proceedings to the registrar for the proclaimed place to which the venue is changed.

Subdivision 5.—Parties.

41. (1) Subject to this Act and the rules, where a plaintiff has a cause of action against two or more persons having a joint liability, it shall be sufficient if any one or more of those persons is or are served with process in any proceedings, and judgment in the proceedings may be given or entered up and enforced against the person or persons so served notwithstanding that others jointly liable have not been served or sued, or are not within New South Wales. Joint liability.

(2) The provisions of section 97 of the Supreme Court Act, 1970, apply to and in respect of a judgment given or entered up in proceedings in the Court in the same way as they apply to and in respect of a judgment given in proceedings in the Supreme Court.

42.

42. An executor or administrator may sue or be sued in any proceedings in like manner as if he were a party suing or being sued in his own right, and judgment in the proceedings and enforcement of the judgment shall be as prescribed. Executors and administrators.

Subdivision 6.—Right of appearance.

43. (1) A party to any proceedings may appear— Right of appearance.

(a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained; or

(b) if no barrister or solicitor is so retained and—

(i) if that party is a natural person—by himself; or

(ii) if that party is a corporation—by an officer of the corporation authorised in that behalf by the corporation in accordance with the rules,

or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.

(2) A person appearing in any proceedings may address the Court and examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in the Court or before a registrar.

(4) Subsection (3) does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(5)

(5) No amount paid to a person who appears in any proceedings, and who is not a barrister or solicitor retained as mentioned in subsection (1), shall be allowed as costs between party and party.

(6) Subsection (2) has effect subject to this Act and the rules and to any direction given by the Court under section 156 (2).

DIVISION 2.—*Actions: Jurisdiction.*

Subdivision 1.—General jurisdiction in relation to actions.

44. (1) Subject to this Act, the Court shall have jurisdiction to hear and dispose of— Actions.

(a) any personal action at law where the amount claimed does not exceed $10,000, whether on a balance of account or after an admitted set-off or otherwise; or

(b) any action brought to recover an amount not exceeding $10,000, 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.

(2) Without affecting the generality of the provisions of subsection (1) (a), a reference in those provisions to a personal action at law includes a reference to an action for the detention of goods.

(3)

(3) For the purposes of subsection (1) (a), the amount claimed in an action for the detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.

Minors.

45. A minor to whom any wages or other sum arising out of the course of his employment are or is alleged to be due may sue for and recover the wages or sum in the Court in the same manner as if he were of full age.

Ancillary equitable relief: injunctions.

46. (1) Without affecting the generality of Division 8, the Court shall, in any action, have power to grant any injunction (whether interlocutory or otherwise) which the Supreme Court might have granted if the action were proceedings in the Supreme Court.

(2) In relation to the power of the Court to grant an injunction under this section—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c) shall, subject to the rules, extend to the enforcement of any order of the Court made in connection with proceedings for the grant of the injunction.

(3) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of an injunction under this section; and

(b) any other matter necessary or convenient for giving effect to this section.

Cause of action or defendant outside the State.

47. (1) The Court shall have jurisdiction in accordance with this Act to hear and dispose of an action—

(a) notwithstanding that part of the cause of action arose outside New South Wales, provided a material part of the cause of action arose within New South Wales;

(b) notwithstanding that the whole cause of action arose outside New South Wales, provided the defendant was resident within New South Wales at the time of service of the statement of claim in the action; or

(c)

(c) notwithstanding that the defendant is not within New South Wales, provided the whole cause of action or a material part of the cause of action arose within New South Wales and provided the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended) at the time of service of the statement of claim in the action.

(2) Subsection (1) (c) applies whether the defendant has or has not ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, where there are two or more defendants, any one of those defendants.

Miscellaneous limitations on jurisdiction.

48. (1) An action in which the amount claimed does not exceed $20 and which could have been commenced in a court of petty sessions shall not be commenced in the Court except with the leave of the Court, which leave may be given on terms.

(2) Subject to subsection (3), the Court shall not have jurisdiction in an action in which title to land the value of which is more than $10,000 is in question.

(3) If the title to land the value of which is more than $10,000 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

of the Court shall not be evidence of title between the parties or their privies in other proceedings in the Court or in any proceedings in any other court.

(4) Without affecting Division 8, the Court shall not have jurisdiction in actions for possession of land by virtue of this Part.

Subdivision 2.—Splitting and dividing of causes of action and abandonment.

49. (1) Where a person splits or divides any cause of action against another person— Actions not to be split or divided.

(a) so as to bring an action for part of the amount for which an action may be brought on that cause; or

(b) so as to plead a cross-claim for part of the amount for which an action may be brought on that cause,

and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action brought or cross-claim pleaded on that cause (whether brought or pleaded in the Court or brought, taken or pleaded in any other court).

(2) Where a person has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another person, whether or not the amount of that claim exceeds $10,000, that other person may, notwithstanding the provisions of subsection (1) but subject to any other provision of this Act, bring an action on, or plead by way of cross-claim in the Court, each of those securities as if each of them formed a distinct cause of action.

50. A plaintiff who has a cause of action for more than $10,000 may abandon the excess by stating the abandonment in the statement of claim by the lodging of which an action is commenced on that cause of action, and where the abandonment is so stated— Abandonment.

(a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his case, recover to an amount not exceeding $10,000;

(b) judgment in the action shall be in full discharge of all demands in respect of that cause of action; and

(c) entry of the judgment in the records of the Court shall be made accordingly.

Subdivision 3.—*Jurisdiction by consent.*

51. (1) In this section, "memorandum of consent", in relation to an action, means a document signed— Consent jurisdiction.

(a) where there is only one defendant in the action—by the defendant or his solicitor; or

(b) where there are two or more defendants in the action—by each defendant or his solicitor,

in which it is stated that the defendant, or each of the defendants, consents to the action being tried in the Court and is aware that, unless the memorandum is filed in accordance with subsection (2), the Court will not have jurisdiction to hear and dispose of the action.

(2) Where, but for this subsection, the Court would not have jurisdiction to hear and dispose of an action by reason only of the fact that the amount claimed exceeds $10,000, the Court shall have jurisdiction to hear and dispose

of

of that action if, together with the statement of claim by the lodging of which the action is commenced, the plaintiff files a memorandum of consent in respect of the action.

DIVISION 3.—*Actions: Procedure.*

Subdivision 1.—*General.*

Actions to be heard at proper place.

52. Except where otherwise expressly provided by or under this Act, an action and any proceedings ancillary to that action shall be heard and disposed of by the Court sitting at the proper place in relation to that action.

Subdivision 2.—*Commencement of actions.*

Manner of commencement of actions.

53. (1) An action shall be commenced by the lodging by the plaintiff with a registrar—

(a) except in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim; or

(b) in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim or a statement of liquidated claim,

for issue by the registrar.

(2) Proceedings ancillary to an action shall be commenced in the prescribed manner.

Place of commencement of action.

54. An action may be commenced at any proclaimed place.

55.

55. (1) In this section— Relevant places.

"defendant" includes, where there are two or more defendants, any one of those defendants;

"relevant place", in relation to an action, means each of the following places :—

(a) the place where the defendant is resident;

(b) the place where the defendant carries on his business; and

(c) the place where the cause of action arose,

but does not include any place outside New South Wales.

(2) Where the proclaimed place at which an action is commenced is not the nearest proclaimed place to a relevant place, the defendant may, if he files the notice of the grounds of his defence under section 56 within the time prescribed for the purposes of this subsection, file within that time an affidavit by the defendant or his solicitor or agent specifying all the relevant places and the nearest proclaimed place to each of them.

(3) Where the defendant files the notice of the grounds of his defence and an affidavit in accordance with subsection (2), the plaintiff may, within the time prescribed for the purposes of this subsection, file—

(a) a notice, signed by the plaintiff or his solicitor or agent, selecting as the venue of the action one of the proclaimed places specified in the defendant's affidavit; or

(b) an affidavit by the plaintiff or his solicitor or agent stating that a notice under paragraph (a) is not filed on the ground that—

(i) the proclaimed place at which the action was commenced is the nearest proclaimed place to a relevant place;

(ii) at least one of the places specified as relevant places in the affidavit under subsection (2) is not a relevant place;

(iii) not all of the relevant places were specified in the affidavit under subsection (2); or

(iv) the place specified in the affidavit under subsection (2) as being the nearest proclaimed place to a relevant place specified therein is not the nearest proclaimed place,

and if a notice under paragraph (a) or affidavit under paragraph (b) is not so filed, the plaintiff shall, at the expiration of that prescribed time, be deemed to have discontinued his action.

(4) The filing of a notice in accordance with subsection (3) shall have the same effect as if the Court had ordered a change of venue under section 40 to the proclaimed place selected in the notice.

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either order a change of venue under section 40 to such proclaimed place as the Court thinks proper (whether or not that place is a relevant place) or direct that there shall be no such change of venue.

Subdivision 3.—Defences.

56. (1) A defendant in an action commenced by the lodging of an ordinary statement of claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor. **Defences.**

(2) A defendant in an action commenced by the lodging of a statement of liquidated claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor, and an affidavit verifying the grounds or verifying such facts as the Court may, in the special circumstances of the case, deem sufficient.

(3) The registrar shall, as soon as practicable after the filing of any notice of grounds of defence under this section, give or send by post a copy of the notice and any affidavit filed with it to the plaintiff or his solicitor.

(4) A defendant shall not at the trial of an action, except by consent of the plaintiff or by leave, given on terms, of the Court, set up any ground of defence not included in a notice of grounds of defence filed by him under this section.

(5) A defendant shall not, by reason of having filed a notice of the grounds of his defence to an action, be deemed to have waived any objection he may have on the ground of want of jurisdiction in the Court to try the action.

Subdivision 4.—Order for judgment and judgment by default.

Order for judgment.

57. (1) Where, in an action commenced by the lodging of an ordinary statement of claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (1); and

(b) judgment has not been given or entered up in the action,

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing an affidavit of service of the statement of claim on that defendant, have an order, to be called an order for judgment, made by the Court or the registrar against that defendant.

(2)

(2) Subject to subsection (4), where an order for judgment is made in an action against a defendant—

(a) that defendant shall be deemed to have admitted liability; and

(b) the action shall go to trial only as to the assessment of the amount to be recovered by the plaintiff.

(3) An order for judgment—

(a) may be set aside, on terms, by order of the Court at any time before judgment; and

(b) shall, without order, be set aside on the filing of a notice of grounds of defence under section 56 (1) in the action in which the order for judgment was made.

(4) Subsection (2) shall, on the setting aside of an order for judgment in accordance with subsection (3), cease to have any operation upon or in respect of the action in which the order for judgment was made.

(5) Where an order for judgment is set aside, the Court may, at the same time or subsequently, make such orders as it thinks fit as to the continuance of the action and as to the costs incurred by any party by the making or setting aside of the order for judgment or by any adjournment of the hearing of the action.

Default judgment.

58. (1) Where, in an action commenced by the lodging of a statement of liquidated claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (2); and

(b) judgment has not been entered up in the action,

the

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing—

(c) an affidavit of service of the statement of claim on that defendant; and

(d) a statement of—

(i) the amount then due to the plaintiff in respect of the cause of action for which the action was commenced; and

(ii) any payments made or credits accrued since the commencement of the action in reduction of the amount of the plaintiff's claim or costs,

verified by the oath of the plaintiff, or his solicitor or agent,

have default judgment entered up by the Court or the registrar against that defendant for the amount referred to in paragraph (d) (i) or the amount specified in the statement of claim (whichever is the lesser), and such amount (if any) as may, for the purposes of this subsection, be prescribed as costs.

(2) A default judgment under this section may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

Subdivision 5.—Judgment by confession or agreement.

59. In this Subdivision— Interpretation: Pt. III, Div. 3, Subdiv. 5.

"defendant", in relation to an action—

(a) in which there is only one defendant—means the defendant; or

(b) in which there are two or more defendants —means all or any of the defendants;

"plaintiff",

"plaintiff", in relation to an action—

(a) in which there is only one plaintiff—means the plaintiff; or

(b) in which there are two or more plaintiffs—means all the plaintiffs.

Judgment by confession.

60. (1) At any time before judgment in an action, the defendant may sign a statement confessing to the amount, or part of the amount, of the claim of the plaintiff and may specify in that statement by what instalments payable at what times the defendant is prepared to pay the amount so confessed to.

(2) Where a statement under subsection (1) is filed before judgment, the registrar shall as soon as practicable thereafter give or send by post to the plaintiff or his solicitor notice of the amount to which the defendant has confessed and of any terms of payment specified by the defendant in that statement.

(3) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has not in the action claimed damages in respect of any personal injuries, the registrar shall forthwith after giving or sending the notice under subsection (2)—

(a) enter up judgment for the plaintiff for that amount; and

(b) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(4)

(4) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has in the action claimed damages in respect of any personal injuries and the plaintiff within the prescribed time—

(a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

(ii) make application to the Supreme Court for an order under section 145 removing the action into the Supreme Court and give notice to the registrar that he has so applied; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(5) Where the confession is to part only of the amount of the claim of the plaintiff and the plaintiff within the prescribed time—

(a) does not file a notice refusing to accept in full satisfaction of his claim the amount so confessed to; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(6) An order made under subsection (3) (b), (4) (d) or (5) (d) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

(7) Where within the prescribed time the plaintiff does not—

(a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to; or

(b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of any personal injuries—make an application as referred to in subsection (4) (a) (i), or make an application and give notice, as referred to in subsection (4) (a) (ii),

but files a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall forthwith enter up judgment for the plaintiff for the amount to which the defendant has confessed and—

(c) the registrar shall be deemed to have made an order under section 88 (4) that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

(d) the plaintiff's notice of refusal shall be deemed to be a notice of objection under section 88 (5).

(8)

(8) Where the plaintiff makes application, on the ground that he did not receive in sufficient time any notice required to be forwarded to him by the registrar under subsection (2), for the setting aside of any judgment entered up by the registrar under subsection (4) (c) or (5) (c) or any order made by the registrar under subsection (3) (b), (4) (d) or (5) (d), the Court may, if it thinks fit, set aside, on terms, the judgment or order.

(9) Where, within the prescribed time referred to in subsection (4), the plaintiff makes an application as referred to in subsection (4) (a) (i) or makes an application and gives notice, as referred to in subsection (4) (a) (ii), and the application is refused—

(a) the provisions of subsections (4) and (7) shall apply as if the application had not been made; and

(b) where the time at which the registrar is, in accordance with the rules, notified of the refusal is later than that prescribed time, the provisions of subsection (4) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.

Judgment by agreement.

61. (1) At any time before judgment in an action—

(a) where there are parties joined otherwise than as plaintiff or defendant—

(i) all the parties; or

(ii) the plaintiff and the defendant; or

(b) where there are no parties joined otherwise than as plaintiff or defendant—the plaintiff and the defendant,

may enter into an agreement as to the judgment to be entered in the action as between the parties to the agreement and as to the terms and conditions (if any) upon which the judgment is to be satisfied.

(2)

(2) Where an agreement under subsection (1) is filed before judgment, the registrar shall forthwith enter up judgment in accordance with that agreement.

(3) Where—

(a) the registrar enters up a judgment under subsection (2);

(b) a judgment debt arises by virtue of the judgment; and

(c) the agreement specifies by what instalments payable at what times the judgment debt or part thereof is to be paid,

the registrar shall forthwith order that the judgment debt or part be paid by such instalments payable at such times as are so specified.

(4) An order made under subsection (3) shall be deemed to be an order made under section 88 (4) pursuant to an agreement referred to in section 88 (1) (b).

(5) A judgment entered up under subsection (2) pursuant to an agreement under subsection (1) may be set aside, on terms, by the Court on sufficient cause being shown on the application of any party to the action who was not a party to that agreement.

Machinery as to statements of confession and agreements.

62. (1) A statement under section 60 (1) may, instead of being signed by the defendant, be signed by his solicitor or barrister on his behalf.

(2) An agreement under section 61 (1) may, instead of being entered into personally by a party to the action, be entered into by his solicitor or barrister on his behalf.

(3) A statement under section 60 (1) or an agreement under section 61 (1) shall have no force or effect for the purposes of this Subdivision unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) A judgment entered up—

(a) under section 60 pursuant to a statement under section 60 (1) shall, as between the plaintiff and the defendant signing the statement; or

(b) under section 61 pursuant to an agreement under section 61 (1) shall, as between the parties to the agreement,

be in full discharge of all demands in respect of the cause of action in respect of which the statement was signed or the agreement was entered into.

Subdivision 6.—Arbitration.

Arbitration.

63. (1) The Court at any time may, with the consent of all the parties to an action, order, on terms, that the action be referred to an arbitrator.

(2) An award made by an arbitrator in an action referred to arbitration under subsection (1) shall, as soon as practicable, be—

(a) communicated by the arbitrator to the registrar; and

(b) entered by the registrar as the judgment of the Court in the action.

(3) A judgment entered under subsection (2) (b) shall, subject to subsection (4), be as binding and effectual for all purposes as if given by the Court.

(4) The Court, on application made to it by any party within the prescribed time, may set aside an award referred to in subsection (2) and any judgment entered under subsection (2) (b) in consequence of the award, and may—

(a) refer the award back to the arbitrator who made it; or

(b) revoke the reference to the arbitrator who made the award and make such order as it thinks fit for the continuance of the action.

Subdivision 7.—Witnesses, evidence and ancillary matters.

64. (1) On request by a party to an action, the registrar for any proclaimed place (whether or not that place is the proper place in relation to the action) shall, subject to the rules, issue— **Subpoenas.**

(a) a subpoena to give evidence, requiring a person specified therein to attend and give evidence at any hearing of the action or of proceedings ancillary to the action, as directed by the subpoena; or

(b) a subpoena for production, requiring a person specified therein to attend and produce, for the purpose of evidence, at any hearing of the action or of proceedings ancillary to the action any document or thing that is in his possession or control and specified in the subpoena, as directed by the subpoena.

(2) The rules may make provision for or with respect to authorising compliance with a subpoena for production issued in respect of a document or thing by the production of the document or thing to a registrar.

(3)

(3) A person—

(a) who is duly served with a subpoena issued under subsection (1);

(b) to whom at the time of service of the subpoena, or not later than a reasonable time before the day on which his attendance is required by the subpoena, tender is made of an amount in respect of the expenses of complying with the requirements of the subpoena, determined in accordance with the rules; and

(c) who, without reasonable excuse, fails to comply with the subpoena,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or produce the document or thing.

Evidence and production by persons present.

65. A person who is present at the hearing of an action or of proceedings ancillary to an action and who, having been required by the Court but not by a subpoena to do so, refuses without reasonable excuse—

(a) to give evidence; or

(b) to produce a document or thing then in his possession,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or to produce the document or thing.

Fines under section 64 or 65.

66. (1) A fine imposed under section 64 or 65 is payable to the registrar.

(2)

(2) Payment of a fine imposed under section 64 or 65 may, if the Court so orders, be enforced, subject to the rules, as if the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the registrar were a judgment creditor.

(3) The amount of any fine paid to or recovered by the registrar under this section shall be applied in such proportions as the Court thinks fit—

(a) towards compensating any party to the action who is injured by failure to comply with the requirements of the subpoena or the Court in respect of which the fine was imposed; and

(b) to the Consolidated Revenue Fund.

Bringing up a prisoner to give evidence.

67. (1) A Judge (whether or not sitting at a proclaimed place), on application made in the prescribed manner by a party to an action, may if he thinks fit issue an order under the seal of the Court for bringing up before the Court any person confined in any prison or place under any sentence, under commitment for trial, or for any other reason, to be examined as a witness in the action, and for returning him to confinement.

(2) The person having the custody of a person in respect of whom an order is made under subsection (1) shall not be bound to comply with the order unless tender is made to him of an amount sufficient to cover the reasonable expenses involved in complying with the order.

Matters ancillary to trial.

68. (1) The rules may make provision for or with respect to—

(a) empowering a party to an action to give another party a notice requiring that other party to do all or any of the following things: —

(i) to give discovery of documents;

(ii)

(ii) to produce documents for inspection;

(iii) to produce documents at the hearing of the action;

(iv) to attend for a medical examination; or

(v) to make admissions for the purposes of the action;

(b) the manner of compliance with such a requirement; and

(c) empowering the Court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) The Court may, subject to and in accordance with the rules, order, on terms, that—

(a) a natural person, or a corporation through any of its officers, attend for examination before the Court, or attend and produce documents, for the purpose of ascertaining or assisting in the ascertainment of the identity of, and the name and place of residence of, and other particulars relating to, a person against whom an action may be brought;

(b) a party give discovery of documents to any party;

(c) a party produce documents for inspection by any party;

(d) a party produce documents at the hearing of any action;

(e) a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any action;

(f) the evidence of a witness be allowed to be taken on an examination before the hearing of an action;

(g) a party attend for a medical examination; or

(h)

(h) a party give further particulars of any statement of claim lodged, grounds of defence filed, or cross-claim pleaded by him,

and may make such further order as may be prescribed in the event of any failure by a person to comply with its order.

Informal proof; admissions. No. 52, 1970, s. 82.

69. (1) The Court may at any stage of any action—

(a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, and with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and

(b) require any party to the action, not being a minor or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in case of refusal or neglect to make the admissions may, unless the Court is of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

(2) An admission made as required by the Court under subsection (1) (b)—

(a) shall be for the purpose of the action in which it is made and for no other purpose;

(b) shall be subject to all just exceptions; and

(c) may, with the leave of the Court, given on terms, be amended or withdrawn.

70. Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person for the purposes of an action— Examination on oath. No. 52, 1970, s. 83.

(a) the examination shall be taken on oath; and

(b) the oath shall be administered by the person taking the examination or by a Judge.

Subdivision 8.—Trial and jury.

71. Subject to this Act and the rules, an action in which a notice of grounds of defence is filed under section 56 or in which an order for judgment is made under section 57, shall be set down for trial in accordance with the rules. Setting down for trial.

72. (1) Subject to this Act, where an action that has been set down for trial is called on for trial— Action called on for trial.

(a) if the plaintiff and a defendant appear, the Court may proceed to hear and dispose of the action as against that defendant; or

(b) if the plaintiff does, but a defendant does not, appear, the Court may proceed to the trial of the action against that defendant on the part of the plaintiff only.

(2) Where the Court proceeds to the trial of the action on the part of the plaintiff only, as referred to in subsection (1) (b), its judgment—

(a) may, on sufficient cause being shown, be set aside by order of the Court on terms; and

(b) shall, if not set aside, be as final and conclusive between the parties to the action as if both parties had appeared.

Striking out of action.

73. (1) The Court may, if it thinks fit, strike out an action at any time on terms, and without affecting the generality of the foregoing provisions of this subsection, the Court may so strike out an action if—

(a) no party appears; or

(b) a defendant does, but the plaintiff does not, appear.

(2) Where an action is struck out under subsection (1), the Court may, on the application of any party, order that the action be restored on terms, and without affecting the generality of the foregoing provisions of this subsection, that action may be so restored upon such terms and conditions as to costs, the staying of the action until payment of costs, and the priority of the hearing of the action as the Court thinks fit.

Conduct of the trial.

74. Subject to any direction given by the Court under section 156 (2), the order of evidence and addresses and conduct of the trial in respect of any action shall be in accordance with the rules.

Nonsuit.

75. The Court, at the trial of an action, may, in the prescribed circumstances, order a nonsuit where satisfactory proof is not given entitling the plaintiff to the judgment of the Court.

76. Where in an action a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at— Verdict exceeding $10,000.

(a) an amount in excess of $10,000 but not in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the full amount of the verdict; or

(ii) the total amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be; or

(b) an amount in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the amount of $15,000; or

(ii) the amount of $15,000 reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

77. (1) In an action the Judge shall determine all questions of law. Questions of fact and law.

(2) In an action the Judge shall, subject to subsection (5), determine all questions of fact unless a jury has been summoned.

(3)

(3) Subject to sections 78 and 79, an action shall be tried without a jury unless the Court makes an order (which may be made on terms) to the contrary.

(4) The Court may order that any question of fact in an action be tried before any other question of fact in the action.

(5) In an action, where a jury has been summoned—

(a) the Court may order that all or any issues of fact be tried without the jury if—

(i) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury; or

(ii) all parties consent to the order; and

(b) issues of fact on a defence arising under section 63 (5) or 64 (1) (c) of the Workers' Compensation Act, 1926, shall be tried without the jury.

Where jury may be summoned.

78. (1) In any action (other than an action to which section 79 applies), where the amount claimed exceeds $100, any party may, within the prescribed time, by filing a requisition for trial with a jury and paying the fee prescribed by the regulations made under section 150 require that a jury be summoned to try the action, and a jury shall be so summoned.

(2) Where the Court makes an order under section 77 (3) or 79 (1), the plaintiff shall pay the fee prescribed by the regulations made under section 150 and shall not be entitled to take any further step in the action until the fee is paid.

(3) The fee paid under subsection (1) or (2) shall be treated as costs in the action, unless the Court otherwise orders.

79.

79. (1) In any action to which this section applies, the Court may, on the application of any party, and shall, on the application of all parties, make an order (which may be made on terms) that the action be tried with a jury. Running down cases. No. 52, 1970, s. 87.

(2) Subject to subsection (4), this section applies to any action in which—

(a) damages are claimed in respect of—

(i) the death of or bodily injury to any person and the claim is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street;

(ii) damage to property caused by or arising out of the use of a motor vehicle; or

(iii) any other matter in which the liability incurred is caused by or arises out of the use of a motor vehicle; or

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a).

(3) In subsection (2)—

"motor vehicle" means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

"public street" means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

(4)

(4) This section does not apply to an action for damages in respect of the death of or bodily injury to any person where the action is based upon an act, neglect or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff.

Special verdict. No. 52, 1970, s. 90.

80. It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial of an action.

Subdivision 9.—Judgments and orders.

Judgment final.

81. Subject to this or any other Act, a judgment in an action shall, unless set aside in accordance with this Act, be final and conclusive between the parties to the action.

Setting aside of judgment or order.

82. (1) A judgment or order of the Court in an action may, on sufficient cause being shown, be set aside, on terms, by order of the Court, if the judgment was given or entered up, or the order was made, irregularly, illegally or against good faith.

(2) Subsection (1) does not apply to an irregularity arising by virtue of a failure to which section 159 applies.

(3) A judgment or order of the Court in an action may, on terms, be set aside by order of the Court if the parties to the action consent.

83.

83. (1) The judgment in an action for the detention of goods, if for the plaintiff, shall be for an amount comprising— Judgment in detinue.

(a) the value of the goods, as determined by the Court; and

(b) damages (if any) awarded for the detention of the goods.

(2) The rules may make provision for or with respect to the circumstances in which the judgment debt in an action for the detention of goods shall be deemed to be satisfied, to the extent of the value of the goods, by the delivery of the goods to the plaintiff.

DIVISION 4.—*Actions: Enforcement of Judgments.*

Subdivision 1.—*General.*

84. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: Pt. III, Div. 4.

"judgment" includes any order of the Court for the payment of an amount of money as costs or otherwise;

"judgment debt" includes—

(a) any amount ordered by the Court to be paid as costs or otherwise; and

(b) any amount payable under section 120 as costs without any order of the Court.

(2) A reference in this Division to the giving of a judgment includes a reference to the making by the Court of an order for the payment of an amount of money as costs or otherwise.

85.

Interest on judgment debt.

85. (1) Unless the Court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

(a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as the Court in any particular case fixes;

(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act, 1970; and

(c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Notwithstanding subsection (1) or (2), where—

(a) the amount of a judgment debt (excluding the amount of costs to be ascertained by taxation or otherwise) is paid in full within twenty-one days after the judgment debt becomes payable; or

(b) the amount of costs ascertained by taxation or otherwise is paid in full within twenty-one days after that amount is so ascertained,

interest shall, unless the Court otherwise orders in any particular case, not be payable on the amount so paid.

Setting off of judgments.

86. (1) Where the judgment debtor in respect of an action (in this section referred to as "the first action") recovers judgment in his favour in another action (in this section referred to as "the second action") against his

judgment

judgment creditor, the judgment debtor may apply to the Court sitting at the proper place for either of those actions for an order that the judgment against him be set off against the judgment in his favour.

(2) Where an order is made under subsection (1) and—

(a) the amount of the judgment debt in the first action is less than or equal to the amount of the judgment debt in the second action, the judgment in the first action shall be deemed to be satisfied, and the amount of the judgment debt in the second action shall be reduced by the amount of the judgment debt in the first action; or

(b) the amount of the judgment debt in the first action is more than the amount of the judgment debt in the second action, the amount of the judgment debt in the first action shall be reduced by the amount of the judgment debt in the second action, and the judgment in the second action shall be deemed to be satisfied.

Subdivision 2.—Payment of judgment debt.

87. (1) The Court may, on the application of any party to an action or without any such application being made, when giving judgment in the action, order that the judgment debt (if any) be paid at such time, or by such instalments payable at such times, as it thinks fit. Payment of judgment debt generally.

(2) Subject to this Subdivision, every judgment debt shall be payable forthwith.

(3) Subject to subsection (4), the amount of every judgment debt arising from an action, whether payable in one sum or by instalments, shall be payable to the registrar.

(4)

(4) Notwithstanding subsection (3), any payment by or on behalf of a judgment debtor made on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, operate to reduce the judgment debt by the amount of the payment.

(5) Where the Court makes an order under subsection (1), the order shall, while it remains in force, operate as a stay of enforcement of the judgment.

(6) Where a judgment creditor files an affidavit for the purpose of requiring the issue of any document for or in connection with the enforcement of a judgment, the affidavit shall, in any action (whether in the Court or in any other court) by the judgment debtor against the registrar for the wrongful issue of the document, be conclusive evidence in favour of the registrar that at the time of the issue of the document—

(a) where an amount is stated in the affidavit as having been paid in reduction of the judgment debt—that amount and no other amount had been paid; or

(b) where there is a statement in the affidavit that no amount has been paid in reduction of the judgment debt—no amount had been paid,

by or on behalf of the judgment debtor in reduction of the judgment debt.

Order for instalments subsequently.

88. (1) Whether or not an order in respect of a judgment debt has been made under section 87 (1)—

(a) the judgment debtor may make an application in writing, supported by an affidavit as to his property and means, to the registrar for leave to pay the judgment debt, or the balance of the judgment debt

then

then owing to the judgment creditor, by such instalments payable at such times as may be specified in the application; or

(b) the judgment creditor and the judgment debtor may enter into an agreement specifying the amount agreed to be then owing to the judgment creditor, and may in that agreement specify by what instalments payable at what times that amount is to be paid.

(2) An agreement under subsection (1) (b) may, instead of being entered into personally by the judgment creditor or the judgment debtor, be entered into by his solicitor or barrister on his behalf.

(3) An agreement under subsection (1) (b) shall have no force or effect for the purposes of this section unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) Where—

(a) an application is made by a judgment debtor under subsection (1) (a), the registrar shall forthwith consider and determine the application and may—

(i) order that the judgment debt be paid by such instalments payable at such times as are specified in the application; or

(ii) refuse to make such an order; or

(b) an agreement under subsection (1) (b) is filed, the registrar shall forthwith order that the judgment debt be paid by such instalments payable at such times as are specified in the agreement,

and where he makes an order under paragraph (a) or (b) the registrar shall, as soon as practicable thereafter, give or send by post to the judgment creditor and judgment debtor notice of the order.

(5) Where an order is made by a registrar under subsection (4) pursuant to an application made by the judgment debtor under subsection (1) (a), the judgment creditor may, within the prescribed period after notice of the order was given or sent to him under subsection (4) by the registrar, file notice of his objection to the payment of the judgment debt by the instalments specified in the order.

(6) Where under subsection (4) the registrar refuses to make an order, or where the judgment creditor files with the registrar a notice of objection in accordance with subsection (5), the registrar shall set down the judgment debtor's application for hearing by the Court and shall as soon as practicable thereafter give or send by post to the judgment creditor and the judgment debtor notice of the time and place set down by him for the hearing of the judgment debtor's application, and the Court may, after hearing the judgment debtor and the judgment creditor, or such of them as appears, deal with the application and—

(a) where the registrar refused to make the order—

(i) make an order that the judgment debt, or the balance of the judgment debt then owing to the judgment creditor, be paid by such instalments payable at such times as the Court thinks fit; or

(ii) refuse to make such an order; or

(b) where the judgment creditor has filed such a notice of objection, confirm, vary or rescind the order of the registrar.

(7) Where—

(a) an application is made by a judgment debtor under subsection (1) and no application in respect of the judgment debt has previously been made under that subsection or under section 87 (1); and

(b)

(b) the registrar refuses under subsection (4) to make an order pursuant to the application,

the application shall, until it is dealt with under subsection (6), and unless the Court otherwise orders, operate as a stay of enforcement of the judgment in respect of which the application is made, except enforcement by way of a garnishee order to which section 98 applies made before the application was made to the registrar.

(8) Where the Court or the registrar makes an order under this section, the order shall, while it remains in force, operate as a stay of enforcement of the judgment in respect of which the order was made, except enforcement by way of a garnishee order to which section 98 applies made before the order under this section was made.

(9) An order may be made under this section in respect of a judgment debt, notwithstanding that at the time when the application for the order or the order is made there is in force an order under section 87 (1) or under this section, but where there is in force such an order any subsequent order made under this section in respect of the same judgment debt supersedes the former order.

Miscellaneous provisions as to orders under sections 87 and 88 and applications.

89. (1) Upon an application, supported by affidavit, made by the judgment creditor on the grounds that there has been a substantial increase in the property or means of the judgment debtor, the Court may, if satisfied as to the truth of those grounds, vary or rescind any order under section 87 or 88 in respect of the judgment debt and, where the Court refuses to grant the application, may order the judgment creditor to pay to the judgment debtor such amount as it thinks fit for the expenses of the judgment debtor in attending the Court to oppose the application.

(2) An order made under section 87 or 88 in respect of a judgment debt shall, subject to the agreement (if any) consequent on the filing of which the order was made under section 88 (4) (b), cease to be in force if the judgment debtor fails to make any payment in accordance with the order, and thereafter the judgment may, except where otherwise directed by the Court or provided in the agreement (if any), be enforced for the balance of the judgment debt owing to the judgment creditor.

Subdivision 3.—*Examination of judgment debtor.*

90. In this Subdivision— Interpretation: Pt. III, Div. 4, Subdiv. 3.

"examination summons" means summons issued under section 91 (1);

"issuing registrar", in relation to an examination summons, means the registrar for the proclaimed place at which the summons was issued;

"presiding registrar" means a registrar before whom a person is required to attend for examination under this Subdivision.

91. (1) Where a judgment debt arising from an action has not been satisfied, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons directed— Examination summons.

(a) where the judgment debtor is not a corporation—to the judgment debtor; or

(b) where the judgment debtor is a corporation—to an officer or former officer of the corporation.

(2)

(2) The examination summons—

(a) shall summon the person to whom it is directed to attend before the registrar for a proclaimed place that, in the opinion of the issuing registrar, is either—

(i) the nearest proclaimed place to the place where that person is resident, as stated by the judgment creditor to the issuing registrar in writing; or

(ii) the most easily accessible to that person,

and that is specified in the summons;

(b) shall summon that person so to attend on a day and at a time fixed by the issuing registrar and specified in the summons, and thereafter as required by the presiding registrar, to be orally examined by the judgment creditor before the presiding registrar; and

(c) may require that person to produce to the presiding registrar, at the examination referred to in paragraph (b), any document or thing in that person's possession or control which tends to show the judgment debtor's true financial circumstances.

(3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons, the judgment creditor may orally examine that person before the presiding registrar as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

(4) The examination summons shall not be directed to an officer or former officer of a corporation under subsection (1) (b) unless the Court or the issuing registrar is

satisfied

satisfied by affidavit or otherwise that the officer or former officer is likely—

(a) to have sufficient knowledge of the affairs of the corporation to enable him to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination under this Subdivision; or

(b) to have in his possession or control any document or thing which tends to show the true financial circumstances of the corporation.

(5) Where in respect of the judgment debt the person to whom the examination summons is directed has attended before a registrar for examination under this Subdivision in answer to or consequent upon the issue of an examination summons, another examination summons directed to that person shall not, unless the Court, on the application of the judgment creditor, otherwise orders, be issued in respect of the judgment debt within three months after that person's attendance.

(6) A registrar may be a presiding registrar as well as the issuing registrar in relation to the one examination summons.

Failure to attend in answer to examination summons.

92. (1) If at the time set down (whether originally or in an order under subsection (7) (b) (ii) or on an adjournment) for the examination of the person to whom an examination summons is directed he fails to attend before the presiding registrar, that registrar, unless he has information satisfying him that the judgment debt has been paid, shall, if the judgment creditor so requests and—

(a) upon due proof of service of the examination summons on the person to whom the summons is directed or, where the examination has been adjourned, that that person has been notified of the time and place fixed for the examination; and

(b)

(b) upon due proof of the tender to that person of the reasonable expenses of attending in answer to the summons, at the time of service of the summons or not later than a reasonable time before the day on which he was required by the summons to attend before the registrar,

report in writing to the Court that that person has so failed to attend.

(2) After the report is made to it, the Court may, if it thinks fit—

(a) authorise the presiding registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or

(b) adjourn the examination of that person and order that he attend before the presiding registrar on a date and at a time specified in the order,

and the presiding registrar shall forthwith give that person, or send to him by post at his address last known to the presiding registrar, a notice informing him of any action taken by the Court under this subsection.

(3) A warrant shall not be issued under this section until after the expiration of fourteen days after the Court authorised its issue.

(4) If during the period of fourteen days after the Court authorised the issue of a warrant in respect of a person he has not attended, by arrangement with the presiding registrar, to be examined as to the matters referred to in section 91 (3), the presiding registrar, on the application of the judgment creditor verified by his affidavit or in such other manner as may be prescribed, may, after the expiration of that period, issue his warrant for the apprehension of that person.

(5)

(5) The warrant shall—

(a) be under the hand of the presiding registrar;

(b) name or otherwise describe the person whose apprehension is required by the warrant;

(c) state shortly the reason for its issue;

(d) order the bailiff, required under section 27 (2) to execute it, to apprehend that person if he is within New South Wales and cause him to be brought before the registrar for the proclaimed place nearest to the place at which he is apprehended to be examined as to the matters referred to in section 91 (3); and

(e) continue in force until it—

(i) is executed;

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the bailiff in whose hands the warrant is for execution; or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of the warrant.

(7) Where the person in respect of whom the issue of a warrant is authorised under subsection (2) (a) attends before a registrar by arrangement, as referred to in subsection (4), or is brought before a registrar under the warrant, as referred to in subsection (5) (d), and—

(a) the judgment creditor attends before the registrar—the judgment creditor may orally examine that person before the registrar as to the matters referred to in section 91 (3); or

(b) the judgment creditor does not so attend—the registrar may—

(i) in accordance with the rules examine that person as to the matters referred to in section 91 (3) and report to the judgment creditor the results of the examination;

(ii) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a day and at a time specified in the order; or

(iii) strike out the examination.

(8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7) (b) (ii) in respect of the examination, or the examination is struck out, whichever first occurs.

Instalment order after examination.

93. (1) Where a person has attended for examination in accordance with this Subdivision before or by the issuing registrar in relation to a judgment debt, that registrar may make an order for the payment of the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order.

(2) An order made under subsection (1) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

Failure to give evidence, etc., at examination.

94. Where a person attends before or is brought before a registrar for examination in accordance with this Subdivision and that person—

(a) without reasonable excuse, refuses to give evidence on oath at the examination;

(b) gives false information at the examination; or

(c) without reasonable excuse, fails to produce any document or thing that he is required by an examination summons to produce thereat,

the Court may, if that registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

Adjournment of examination.

95. A registrar may from time to time adjourn any examination being or to be conducted before or by him under this Subdivision.

Court may exercise registrar's powers under this Subdivision.

96. The Court may exercise or perform any of a registrar's powers, authorities, duties or functions under this Subdivision.

Subdivision 4.—*Attachment of debts.*

Garnishee orders.

97. (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a "garnishee").

(2)

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

(a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee all debts which were due, owing or accruing from him to the judgment debtor at the time when the garnishee order was made and which are so due, owing or accruing at the time of service of the garnishee order;

(b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee; and

(c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).

(3) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached by operation of the order or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

Continuous operation of certain garnishee orders.

98. (1) In this section, "instalment order" means an order made under section 88.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.

(5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

Limitation on operation of garnishee orders attaching a wage or salary.

99. (1) In this section—

"prescribed rate", in relation to a wage or salary, means—

(a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage; or

(b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

"Sydney basic wage" means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

"wage or salary" includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or

(b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

Payment under certain garnishee orders.

100. (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(2) Where a garnishee makes a deduction in accordance with subsection (1), he shall forward to the judgment creditor, when making payment to the registrar or to

or

or at the direction of the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;

(b) the amount deducted by the garnishee for his own use under subsection (1); and

(c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of section 105 (2) be deemed to have been paid by the garnishee.

Limitation of payment under certain concurrent garnishee orders.

101. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of

the

the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

(a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary; or

(b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary.

Procedure where garnishee order not complied with.

102. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as "the garnishee summons") requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.

(2) The garnishee summons—

(a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either—

(i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing; or

(ii) the most easily accessible to the garnishee,

and that is specified in the garnishee summons; and

(b)

(b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.

(3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question of the amount of the debt, wage or salary (if any) attached by the garnishee order, and may give judgment for that amount, or for the unpaid balance of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for him to attend.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

103. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied. Bank accounts. S.C.R. Pt. 46, rr. 2, 5 (2).

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

(a) a condition that notice is required before money is withdrawn;

(b) a condition that a personal application must be made before money is withdrawn;

(c) a condition that a deposit book must be produced before money is withdrawn; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Lien or claim of third person on debt. S.C.R. Pt. 46, r. 10.

104. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

Payment by garnishee.

105. (1) A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to or at the direction of the judgment creditor.

(2)

(2) Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.

Judgment creditor to account for any excess paid by a garnishee.

106. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : $200.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5.—Writ of execution.

Issue of writ of execution.

107. (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, issue a writ of execution to enforce the judgment in the action.

(2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment—

(a) if a period of twelve years has elapsed since the judgment was given or entered up;

(b)

(b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description;

(d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force; or

(e) in the prescribed circumstances.

Priority and duration of writs of execution.

108. (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by him on the writ, and the bailiff for a proclaimed place who is required, under section 27 (2), to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

Seizing and taking under writ of execution.

109. (1) The bailiff for a proclaimed place who is required, under section 27 (2), to execute a writ of execution may seize and take under the writ and may cause to be sold—

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be

possessed

possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except—

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate $500 in value,

being used as such by the judgment debtor or any member of his family; and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff shall, before he causes any property to be sold under a writ of execution, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his judgment, those prices are most likely to be obtained.

(3) Where it appears to the bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, he shall first cause to be sold so much of the property as appears to him to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to him to be sufficient to satisfy the balance due under the execution.

(4) The bailiff shall cause property to be sold under subsection (3)—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense;

(b)

(b) subject to paragraph (a), in such order as the judgment debtor may direct; and

(c) subject to paragraphs (a) and (b), in such order as seems to the bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the bailiff to the judgment creditor.

(6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(7) Where a bailiff may cause property to be sold under a writ of execution, the property may be sold by that bailiff or by another bailiff or, in the case of land, by an auctioneer, as referred to in section 111.

(8) Where any property is to be put up for sale under a writ of execution, the bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.

(9) A bailiff may serve—

(a) on a judgment debtor against whom a writ of execution has been issued; or

(b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the personal property of the judgment debtor in his custody as has been seized under the writ of execution.

(10) A person (whether or not he is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Penalty : $500.

(11) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

Special provisions as to execution against land.

110. (1) Subject to section 105 of the Real Property Act, 1900, and section 188 of the Conveyancing Act, 1919, a writ of execution, when delivered to the bailiff required under section 27 (2) to execute it, binds land in like manner as a writ of execution against property binds goods and chattels.

(2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless—

(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or

(b) the bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(3) A bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the bailiff with the prescribed procedures, but a

purchaser

purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.

(4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.

(5) Where land that is not under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the registrar for that place shall execute a proper assurance thereof in favour of the purchaser.

(6) Where land that is under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the duty imposed on a registrar by section 105 (2) of that Act shall not be performed except by the registrar for that place.

111. The rules may make provision for or with respect to— Auctioneers.

(a) the appointment of an auctioneer licensed under the Auctioneers and Agents Act, 1941, to sell any land under a writ of execution; and

(b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the bailiff in connection with the sale of the land.

112.

112. (1) In this section— Sale or mortgage by judgment debtor of land affected by writ.

"issuing registrar", in relation to a writ of execution, means the registrar for the proclaimed place at which the writ of execution was issued;

"notice of consent" means the notice referred to in subsection (2) (a).

(2) Where land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act, 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act, 1919, and—

(a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor;

(b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage;

(c) the notice of consent is filed with the issuing registrar; and

(d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) Where during that prescribed period—

(a) the judgment debtor sells or mortgages the land;

(b) in the case of a sale—the amount of the deposit (if any) is paid to the issuing registrar, to be held by him as stakeholder; and

(c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than—

(i) the minimum amount referred to in subsection (2) (b); or

(ii) if the judgment creditor notifies the issuing registrar in writing that he consents to payment of a specified amount that is less than that minimum amount—that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar shall, upon production to him of the instrument evidencing the sale or mortgage, and if he is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his consent to the sale or mortgage.

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent shall not, in relation to the land, be affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), shall, subject to and in accordance with the rules—

(a) be paid to or at the direction of the judgment creditor; and

(b) be in reduction of the judgment debt.

Subdivision

Subdivision 6.—Writ against the person.

Writ against the person.

113. (1) Where the Court is satisfied on the application of a judgment creditor that—

(a) the judgment debt arising from an action has not been satisfied; and

(b) the judgment debtor is about to leave the Commonwealth, or to remove any property from the Commonwealth, with intent to evade payment of the judgment debt,

the Court may, if it thinks fit, authorise the registrar to issue a writ against the person of the judgment debtor to enforce payment of the judgment debt and the registrar shall, on being so authorised, issue the writ.

(2) A writ against the person of a judgment debtor shall—

(a) be under the hand of the registrar by whom it is issued;

(b) name or otherwise describe the judgment debtor whose arrest and imprisonment is required by the writ;

(c) order the bailiff, required under section 27 (2) to execute it, to arrest the judgment debtor if he is within New South Wales and to deliver him to the governor of the prison to whom it is directed;

(d) order the governor of the prison to whom it is directed to keep him in custody until discharged in accordance with law; and

(e)

(e) continue in force until the judgment debtor is so discharged or, if the judgment debtor is not arrested, until it expires in accordance with the rules,

and may lawfully be executed on a Sunday.

(3) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of a writ against the person.

(4) The arrest or imprisonment of a judgment debtor under a writ against the person shall not operate as a satisfaction of the judgment debt or any part thereof, but the issue of the writ shall, except as provided in this Subdivision, operate as a stay of enforcement of the judgment until the writ ceases to be in force.

(5) In this section, "the Commonwealth" includes any part of the Commonwealth within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended.

Discharge of judgment debtor.

114. (1) A judgment debtor arrested or imprisoned under a writ against the person shall be discharged from custody under the writ on payment of the amount specified in the writ as being due under the judgment and the costs of executing the writ, and any bailiff, and the governor of any prison, in whose custody the judgment debtor is under the writ, are hereby empowered and required to receive that amount and those costs if tendered, and to transmit them to the registrar for the proclaimed place at which the writ was issued.

(2) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the registrar for the proclaimed place at which the writ was issued a request in writing for the discharge of the judgment debtor from custody, the registrar shall, as soon as practicable after receipt of the request, issue a notice requesting the discharge of the judgment debtor and send or deliver the notice to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ, and the bailiff or governor of the prison shall on receipt of the notice forthwith discharge the judgment debtor from custody under the writ.

(3) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ a request in writing for the discharge of the judgment debtor, the bailiff or governor of the prison shall on receipt of the request forthwith discharge the judgment debtor from custody under the writ.

(4) Where a judgment debtor makes application to the governor of the prison in whose custody he is under a writ against the person for his discharge from that custody, the governor shall as soon as practicable cause the judgment debtor to be brought before the Court at the most convenient proclaimed place for the purpose of making his application to the Court, and on hearing any such application the Court may, if it thinks fit, order, on terms, that the judgment debtor be discharged from custody under the writ.

(5) Where a judgment debtor is discharged by virtue of subsection (2), (3) or (4) from the custody in which he is held under a writ against the person, the discharge from custody shall not operate as a satisfaction of the judgment debt or any part thereof.

DIVISION 5.—*Actions: Interpleader.*

Interpleader by defendant or bailiff.

115. (1) An application may be made for relief by way of interpleader—

(a) by a defendant in an action for or in respect of any debt, money, goods or chattels to which some third party makes a claim; or

(b) by a bailiff if a claim is made to any money, goods or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

(2) An application under subsection (1)—

(a) by a defendant in an action shall be made to the registrar for the proper place in relation to the action; or

(b) by a bailiff, required under section 27 (2) to execute a writ of execution, shall be made to the registrar for the proclaimed place for which he is bailiff.

(3) Where the application is made by the defendant, it shall be supported by an affidavit showing—

(a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;

(b) that the applicant does not collude with the person making a claim as referred to in subsection (1) (a); and

(c) that the applicant is willing to pay or transfer the subject-matter in dispute into court or, if the registrar so requires, to give security to the value of the subject-matter to the satisfaction of the registrar.

116. (1) Where— Claim to property taken or intended to be taken in execution.

(a) a person, other than the person against whom a writ of execution is issued, makes to the bailiff a claim to any money, goods or chattels (in this section referred to as "the property") taken or intended to be taken in execution under the writ;

(b) the judgment creditor has not, in accordance with the rules, directed the bailiff to withdraw from possession of the property, or not to seize the property, as the case may require; and

(c) the property has not been sold under the writ,

then—

(d) where, whether or not a notice referred to in paragraph (e) is given to the claimant and whether or not the period specified in the notice has expired, the claimant pays to the bailiff an amount equal to the value of the property or gives the bailiff security to that value—the property shall thereupon be released from execution under the writ and the bailiff shall make an application for relief by way of interpleader under section 115 in respect of the amount so paid or the security so given; or

(e) where the claimant neither pays that amount nor gives that security before the expiration of a reasonable period specified in a notice given by the bailiff to the claimant for the purposes of this subsection —the bailiff—

(i) may make an application for relief by way of interpleader under section 115 in respect of the property; or

(ii) may, subject to paragraph (d), sell the property as if the claim had not been made, and shall make an application under section 115 for relief by way of interpleader in respect of the proceeds of the sale as if the claim had been made to those proceeds.

(2) The rules may require that a claim referred to in subsection (1) be verified by affidavit of the claimant.

(3) The amount of the value and the nature of the security referred to in subsection (1) shall be as may be agreed upon between the claimant and the bailiff, or where they have not agreed be as determined by some competent person appointed by the registrar, and the costs of the determination shall in the first instance be payable by the claimant.

(4) Any amount paid to the bailiff as referred to in subsection (1) (d), and the proceeds of any sale under subsection (1) (e) (ii), shall as soon as practicable thereafter be paid by the bailiff to the registrar to whom the bailiff's application for relief by way of interpleader is made, and shall be paid out by the registrar in accordance with the order of the Court.

Where application for relief made.

117. (1) Upon an application being made to a registrar under section 115, the registrar shall issue a summons calling upon the claimant to state the nature and particulars of his claim in such form and within such time as may be prescribed.

(2) Upon the issue of the summons and, where the application for relief is made by the defendant, upon the payment of the amount of the claim, or the transfer of the property the subject of the claim, into court, or, if the registrar so requires, upon the defendant giving security to the value of that property, all proceedings in the action and in any other action which may have been brought in the Court, the Supreme Court or any court of petty sessions in respect of the claim shall be stayed.

(3) If the claimant complies with the summons, the registrar shall record the commencement of an interpleader action and issue notice of that action to the claimant and to

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the execution creditor or the plaintiff in the original action, and the Court shall adjudicate upon the claim, and—

(a) make such order between the parties in respect thereof, of the costs of the proceedings and of the continuance of the actions in which proceedings have been stayed; and

(b) where any amount has been paid, or security has been given, to a bailiff in respect of property the subject of the claim, or the property has been sold under section 116 (1) (e) (ii), make such order with respect to the payment of the amount, or the enforcement or discharge of the security, or the proceeds of sale of the property,

as may to it seem fit.

(4) An order made under subsection (3) may be enforced in the same manner as a judgment in an action.

(5) If the claimant fails to comply with the summons—

(a) the stay of proceedings shall be removed;

(b) any money paid, or any property the subject-matter of an action transferred, by a defendant into court under subsection (2) shall be paid or transferred by the registrar to the plaintiff; and

(c) the claimant shall be forever barred from prosecuting any claim in respect of the subject-matter of the action, or the property the subject of the claim made to the bailiff, as the case may be,

unless the Court otherwise orders upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed, and where any money has been paid into court by the bailiff or any security has been given to the bailiff or registrar in respect of the property the subject of

the

the claim or the subject-matter of the action the Court may make such order with respect to the payment of that money or the enforcement or discharge of that security as it thinks fit.

(6) The rules may make provision for or with respect to the practice and procedure of the Court in relation to interpleader actions.

Adverse titles.

118. Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other.

Division 6.—*Actions: Costs.*

Interpretation: Pt. III, Div. 6.

119. In this Division, "costs" means costs payable between party and party, and includes disbursements.

Costs in discretion of Court or follow event.

120. Subject to section 124, the costs of any action, including the costs of any proceedings ancillary to the action, shall be paid by or apportioned between the parties in such manner as the Court in its discretion orders and, in default of any such order, shall, except where otherwise provided by the rules, follow the event of the action.

Agreement as to costs.

121. Where—

(a) a party's costs, or any part thereof, in an action are required to be paid by another party;

(b)

(b) the parties agree upon the amount of those costs; and

(c) the agreement is evidenced to the registrar in the prescribed manner,

the amount of those costs shall be as so agreed upon.

Taxation of costs.

122. (1) Where—

(a) a party's costs in an action are required to be paid by another party; and

(b) an agreement as to the amount of those costs is not entered into and evidenced as required by section 121,

the amount of those costs shall be as determined—

(c) except as provided by paragraph (d), by taxation, in accordance with the rules, by the registrar for the proper place in relation to the action; or

(d) if the action is within a prescribed class of actions and if the Court so orders on the application of any party or without any such application—by taxation, in accordance with the rules, by the registrar for Sydney.

(2) On a taxation of costs—

(a) no item shall be allowed that is not authorised by the rules; and

(b) where an item is allowed, the amount to be allowed for the item shall, subject to subsection (3), be the amount specified in the rules in relation to items of the class to which that item belongs.

(3)

(3) The rules may require that costs payable in any action be reduced by reference to the amount recovered in the action or otherwise.

(4) A taxation of costs may be reviewed by the Court in accordance with the rules.

Costs form part of judgment debt.

123. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

Limitations on costs.

124. (1) If in any action which could have been brought in a court of petty sessions but which is brought in the Court—

(a) the plaintiff recovers a total amount which does not exceed $100 by payment by or on behalf of the defendant without judgment; or

(b) judgment is given or entered up in favour of the plaintiff for an amount which does not exceed $100,

the plaintiff shall not be entitled to recover any costs in the action unless the Court certifies that it appears to it that there was a sufficient reason for bringing or trying the action in the Court.

(2) Subsection (1) does not apply in respect of an action in which judgment is given or entered up for an amount which does not exceed $100 but which would have exceeded $100 but for—

(a) any verdict against the plaintiff on any cross-claim pleaded by the defendant; or

(b) any reduction of the damages due to the plaintiff under Part III of the Law Reform (Miscellaneous Provisions) Act, 1965,

or but for both such a verdict and such a reduction.

(3) No fees to barristers or solicitors shall be allowed in any action for the recovery of a debt or liquidated demand if—

(a) the amount sued for does not exceed $250; and

(b) the defendant does not file notice of the grounds of his defence under section 56.

DIVISION 7.—*Actions: New Trial and Appeal.*

125. In this Division, "action" includes interpleader action. Interpretation: Pt. III, Div. 7.

126. (1) The Court in its discretion may, after judgment in an action, order that a new trial of the action be had if— Order of the Court for new trial.

(a) the parties to the action consent; or

(b) the action is tried with a jury and on the day on which the jury gives its verdict in the action a party to the action—

(i) in the presence of the other party; or

(ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party,

makes application for the order.

(2) The Court may, before judgment in an action and if no verdict in the action has been entered, order, on sufficient cause being shown, that the hearing of the action be discontinued and that a new trial be had.

127. (1) Subject to section 130, where, after judgment in an action, an order has not been made under section 126 (1) in respect of the action, an application for a new trial in respect of the action may be made to the Supreme Court. Application to Supreme Court for new trial.

(2)

(2) On an application under this section in respect of an action, the Supreme Court may order a new trial of the action or of any issue therein or may refuse to make such an order.

(3) An application under this section shall be deemed to be an appeal to which sections 106 and 107 of the Supreme Court Act, 1970, apply.

(4) Without affecting the generality of subsection (2), the Supreme Court may order a new trial under this section on the ground that a verdict, finding or assessment of the Judge, whether sitting with or without a jury, is against the evidence and the weight of evidence.

(5) An application under this section shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Appeal to Supreme Court.

128. (1) Except in the case of an action of the nature mentioned in subsection (2), an appeal shall, subject to sections 129 and 130, lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, in an action.

(2) In the case of an action in which the relief sought or granted includes an injunction under section 46, an appeal shall lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, or upon the determination of any question of fact, in the action.

(3) In an appeal under subsection (1) or (2), the Supreme Court—

(a) if it is of the opinion that a nonsuit should have been ordered at the trial—may order a nonsuit;

(b) if it is of the opinion that upon the evidence any party is as a matter of law entitled to a verdict in the action or upon any issue therein—may give that verdict and may order that such judgment be entered as is appropriate to that verdict; or

(c) may order that a new trial of the action or of any issue therein be had,

or may refuse to make such an order or give such a verdict.

(4) In an appeal under subsection (2), the Supreme Court may grant, refuse, vary or rescind any injunction relative to the action.

(5) Where no injunction under section 46 is granted in an action in which the relief sought includes such an injunction, the Supreme Court may, if it thinks fit, refuse to entertain an appeal under subsection (2) in relation to the action if it is of the opinion that the injunction was sought only for the purpose of securing the right to appeal under subsection (2).

(6) An appeal under subsection (1) or (2) shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Agreement not to appeal.

129. An appeal shall not lie under section 128 (1) from any ruling, order, direction or decision of the Court if before the ruling, order, direction or decision is pronounced the parties agree in writing, signed by themselves or their solicitors, that the ruling, order, direction or decision shall be final.

130.

Whether application or appeal to Supreme Court is as of right.

130. (1) An application under section 127 may be made or an appeal under section 128 (1) lies—

(a) where the application or appeal involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of $1,000 or upwards—as of right; or

(b) in any case—by leave of the Supreme Court.

(2) An appeal under section 128 (2) lies as of right.

Stay of proceedings on an application or appeal to Supreme Court.

131. (1) Where—

(a) after judgment in an action the Court orders that proceedings be stayed during the period within which an application under section 127 may be made or an appeal under section 128 may be brought; and

(b) during that period—

(i) such an application is made or such an appeal is brought in respect of those proceedings; and

(ii) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the applicant or appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,

the

the stay of proceedings shall continue until the application or appeal is disposed of or until the Court or the Supreme Court otherwise orders.

(2) Except as provided in this section or as directed by the Supreme Court, an application or appeal referred to in subsection (1) shall not operate as a stay of proceedings.

(3) This section does not affect the operation of section 156 (3).

DIVISION 8.—*Miscellaneous Jurisdiction.*

Subdivision 1.—*General.*

132. Subject to this Act and the rules, nothing in Divisions 2 to 7 (inclusive) applies to or in respect of any proceedings under this Division. Non-application of Divs. 2-7.

Subdivision 2.—*Possession of land and equity proceedings.*

133. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for possession of land the value of which does not exceed $10,000, as determined by the Court. Jurisdiction in proceedings for possession of land.

(2) Nothing in subsection (1) applies in respect of proceedings under the Landlord and Tenant Act, 1899.

134. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for— Jurisdiction in equity proceedings.

(a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien where the amount owing in respect of the mortgage, charge or lien does not exceed $5,000, as determined by the Court;

(b) the specific performance, rectification, delivery up or cancellation of any agreement for—

(i) the sale or purchase of any property at a price not exceeding $5,000; or

(ii) the lease of any property the value of which does not exceed $5,000, as determined by the Court;

(c) an order under section 3 of the Testator's Family Maintenance and Guardianship of Infants Act, 1916;

(d) relief against fraud or mistake where the damage sustained or the estate or fund in respect of which relief is sought does not exceed $5,000 in amount or value, as determined by the Court;

(e) the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed $5,000 in amount or value, as determined by the Court; or

(f) the administration of the estate of a deceased person, where the estate does not exceed $5,000 in amount or value, as determined by the Court.

(2)

(2) In any proceedings pursuant to subsection (1) (c), the Court shall not have power to make an order for provision under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, that will or may result in the amount of provision so made exceeding $5,000.

Commencement of proceedings.

135. (1) Proceedings in the Court for possession of land shall be commenced at the nearest proclaimed place to the place in New South Wales where the land or any part of the land is situated.

(2) Proceedings in the Court under section 134 shall be commenced at the nearest proclaimed place to the place in New South Wales—

(a) in the case of proceedings pursuant to section 134 (1) (a) or (b)—

(i) where the mortgage, charge or lien is of or over land or the agreement is in respect of the sale, purchase or lease of land—where a defendant is resident or carries on business or where the land or any part of the land is situated; or

(ii) in any other case—where a defendant is resident or carries on his business;

(b) in the case of proceedings pursuant to section 134 (1) (c) or (f)—

(i) where the deceased person last resided; or

(ii) where an executor or administrator is resident or carries on his business; or

(c) in the case of proceedings pursuant to section 134 (1) (d) or (e)—where a defendant is resident or carries on his business.

Proceedings commenced at wrong proclaimed place.

136. Where proceedings under this Subdivision, not being proceedings transferred to the Court under section 143 (2), are commenced at a proclaimed place that is not a place at which they ought, under section 135, to have been commenced, the Court may, on the application of a party to the proceedings or without any such application—

(a) order that the proceedings be continued in the Court notwithstanding that they were commenced at that place;

(b) order a change of venue of the proceedings, under section 40, to such other proclaimed place as the Court thinks proper; or

(c) strike out the proceedings.

Powers of the Court under this Subdivision.

137. In relation to proceedings under this Subdivision—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of any judgment or order of the Court in those proceedings.

138. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to— **Rules.**

(a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings;

(b) the costs of any such proceedings; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

139. Division 7 applies to and in respect of proceedings under this Subdivision in the same way as if they were an action. **Appeal.**

Subdivision 3.—Temporary injunctions.

140. (1) The Court shall have jurisdiction to grant an injunction, to be called a temporary injunction, to restrain— **Temporary injunctions.**

(a) a threatened or apprehended trespass or nuisance; or

(b)

(b) the breach of a negative stipulation in a contract the consideration for which does not exceed $5,000,

in like manner, subject to this Subdivision, as the Supreme Court might grant an interlocutory injunction in like circumstances.

(2) Subject to this Subdivision, a temporary injunction shall continue in force for a specified period not exceeding fourteen days, but if the specified period is less than fourteen days, it may be renewed from time to time, but so that the total period for which the temporary injunction is in force does not exceed fourteen days.

(3) A temporary injunction may be renewed so that the total period for which it is in force exceeds fourteen days if the Court is satisfied that the additional time is required to enable proceedings to be commenced or heard in the Supreme Court in relation to the matter.

(4) A temporary injunction shall cease to be in force if—

(a) the Court, on the application of a party, so orders; or

(b) the Supreme Court, on the application of a party, so orders, whether or not the Supreme Court grants an injunction or gives any other relief in relation to the matter.

(5) Proceedings for a temporary injunction may be commenced at any proclaimed place, not being a prescribed proclaimed place.

(6) A temporary injunction may be renewed by the Court only where it is sitting at a proclaimed place that is not a prescribed proclaimed place.

(7)

(7) A reference in this section to the renewal of a temporary injunction includes a reference to the grant of another temporary injunction in respect of the same matter by the Court, whether before or after the expiry of the first-mentioned injunction.

Powers of Court under this Subdivision.

141. With respect to temporary injunctions—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof with respect to the granting of interlocutory injunctions;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge with respect to interlocutory injunctions; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable with respect to the granting of interlocutory injunctions; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of a temporary injunction and any order of the Court made in connection with proceedings for the granting of the temporary injunction.

142. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to— Rules.

(a) the procedure to be followed with respect to the granting and enforcing of temporary injunctions;

(b) the costs of proceedings in the Court in relation to temporary injunctions; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court.*

Subdivision 1.—*Transfer of proceedings from Supreme Court.*

143. (1) Where any proceedings that are pending in the Supreme Court could have been commenced as an action in the Court, and pleadings in the Supreme Court have closed, and the claim in the proceedings— Transfer of proceedings from Supreme Court.

(a) does not exceed $3,000; or

(b) though it originally exceeded $3,000, is reduced by payment, an admitted set-off or otherwise to an amount not exceeding $3,000,

and the whole or part of the demand of the plaintiff is contested, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(2) Where any proceedings that are pending in the Supreme Court could have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

144.

144. (1) Where the Supreme Court makes an order under section 143 (1) for the transfer of any proceedings to the Court sitting at a proclaimed place— Procedure on transfer.

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings in the proceedings with the registrar for that place and, if the plaintiff does not lodge those copies within ten days after the entry of the order, the defendant may lodge them with the registrar;

(b) when the copies have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become an action in the Court to try the issues raised by the pleadings and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with Division 6; and

(ii) as regards costs of the order, copies of the order and pleadings, and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

(2)

(2) Where the Supreme Court makes an order under section 143 (2) for the transfer of any proceedings to the Court sitting at a proclaimed place—

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings (if any) in the proceedings with the registrar for that place and, if the plaintiff does not lodge that copy or those copies, as the case may be, within ten days after the entry of the order, the defendant may lodge it or them with the registrar;

(b) when the copy or copies, as the case may be, has or have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become proceedings in the Court and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with the rules made in pursuance of section 138 (b); and

(ii) as regards costs of the order, copies of the order and pleadings (if any), and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

Subdivision

Subdivision 2.—Transfer of proceedings to Supreme Court.

Transfer of proceedings to Supreme Court.

145. Proceedings may, upon the application of a party, be removed into the Supreme Court by order of the Supreme Court upon such terms as to payment of costs, giving security for the amount claimed or costs, or otherwise, as the Supreme Court thinks fit.

Stay of proceedings on application for order.

146. (1) Where an application is pending in the Supreme Court for an order of removal or prohibition relating to any proceedings, the Supreme Court may make orders for a stay of the proceedings until the determination of the application or until the Supreme Court otherwise orders.

(2) An order for a stay of proceedings made under subsection (1) shall take effect immediately a copy of the order is served by the party who obtained the order upon the registrar for the proper place in relation to the action.

Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court.

147. (1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value—

(a) in the case of proceedings under section 133—$10,000; or

(b) in the case of proceedings under section 134—$5,000,

the validity of any order already made in the proceedings shall not be affected by that decision, and—

(c) the Court shall order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (d), the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and

(d)

(d) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (c) had not been made and as if the subject-matter did not exceed in amount or value the amount mentioned in paragraph (a) or (b), as the case may require.

(2) Subject to subsection (1), the Court may, during the progress of any proceedings under Subdivision 2 of Division 8, for any reason that appears to it to be sufficient, order that the proceedings be transferred to the Supreme Court, and—

(a) the validity of any order already made in the proceedings shall not be affected by the order for transfer; and

(b) the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court.

Removal of proceedings otherwise.

148. Proceedings shall not, except as provided by this Act, be removed out of the Court by appeal, motion, order or otherwise.

DIVISION 10.—*Miscellaneous Provisions.*

Costs where no jurisdiction.

149. Where any proceedings purport to be commenced in the Court and the Court has no jurisdiction to hear and dispose of the proceedings, the Court may, notwithstanding the lack of jurisdiction, make such order (if any) as it thinks fit for the payment by any party to any other party of the costs of the proceedings in the Court, and any such order for costs may be enforced as if the Court had had jurisdiction to hear and dispose of the proceedings.

150.

Regulations: Court fees.

150. (1) The Governor may make regulations for or with respect to fees to be paid in respect of the business of the Court.

(2) Different regulations may be made under this section to apply in different circumstances.

Fees form part of Consolidated Revenue Fund.

151. All fees received by a registrar under this Act shall be paid by him to the Treasurer for payment to the Consolidated Revenue Fund.

Unclaimed money.

152. (1) An amount which—

(a) was paid to a registrar for or on account of or for the use or benefit of any party to any proceedings; and

(b) remains unclaimed in the hands of the registrar for one year after a party to the proceedings becomes entitled to claim the amount,

shall be paid by the registrar to the Treasurer and placed to the credit of the Special Deposits Account in the Treasury.

(2) Section 30 of the Audit Act, 1902, does not apply to any amount referred to in subsection (1) of this section, but section 31 of that Act applies to any amount placed to the credit of the Special Deposits Account under subsection (1) of this section as if the amount had been so placed under section 30 of that Act.

Proceedings for offences.

153. (1) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

(2) Nothing in subsection (1) applies in respect of the imposition of a fine under section 64 or 65.

Offences by corporations.

154. Where a person convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence was an officer of the corporation shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, if he knowingly and wilfully authorised or permitted the commission of the offence.

Civil remedy not affected by proceedings for an offence.

155. Notwithstanding any proceedings against a person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

Miscellaneous powers of Court in respect of proceedings, etc.

156. (1) Subject to section 36, the Court may, on terms, adjourn any sittings or the trial of any proceedings in such manner as the Court thinks fit.

(2) The Court may give directions as to the orderly transaction of the business of the Court in relation to any proceedings.

(3) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

(4) Nothing in this section limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or law to adjourn any sittings or trial, or to give directions or to stay proceedings.

Service of documents.

157. Service of a document for the purposes of or in relation to any proceedings shall be effected by a person prescribed in respect of the class of document to which that document belongs, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such other manner as may be prescribed.

Directions where no procedure provided.

158. If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under this Act or the law under which the step is to be taken or by the practice of the Court, the Court may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall for the purposes of the proceedings be regular and sufficient.

Irregularity. No. 52, 1970, s. 81.

159. (1) Where, in the purported commencement of any proceedings or at any stage in the course of or in connection with any proceedings, there is, by reason of anything done or left undone, a failure to comply with any requirement of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect—

(a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings; and

(b)

(b) subject to subsections (2) and (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings, or exercise its powers under the rules to allow amendments and to make orders dealing with the proceedings generally.

(2) The Court shall not wholly set aside any proceedings on the ground that although not constituting an action for the recovery of a debt or liquidated demand they were commenced by the lodging of a statement of liquidated claim.

(3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection (1) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

Officer acting for corporation.

160. For the purposes of this Act, a corporation may, subject to and in accordance with the rules, authorise an officer of the corporation to sign any document, or do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be deemed to be signed or done by the corporation.

DIVISION 11.—*Rules.*

Rules.

161. (1) The Chief Judge and any four other Judges may make rules for or with respect to—

(a) the procedure (including the method of pleading) and the practice to be followed in the Court in any proceedings (including the procedure and practice

to

to be followed in the offices of the Court) and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any application or appeal which under this or any other Act or Commonwealth Act is to be made to the Court or a registrar;

(b) any matter which, under any Act, may be regulated or prescribed by rules of the Court, or by rules made by the Judges or a majority of Judges or any number of Judges or a Judge;

(c) the joinder of causes of action, the consolidation of proceedings and the joinder, misjoinder and non-joinder of parties;

(d) the continuance of proceedings on the death or bankruptcy of any party or otherwise;

(e) the pleading of cross-claims (whether in the nature of set-off, cross-action or otherwise);

(f) regulating, or empowering a registrar to regulate, the order of business of the Court sitting at any proclaimed place and empowering a Judge or a registrar to give directions as to the steps to be taken to make any proceedings ready for trial, and for this purpose authorising a registrar to exercise the powers of the Court under section 69 (1) (b);

(g) the hearing of proceedings during vacation;

(h) the duties of, and the records to be kept by, the registrars and other officers of the Court in relation to or for the purpose of any proceedings;

(i) any matters relating to the costs of proceedings;

(j) any matters relating to the taxation or other ascertainment of costs payable by a party to another party in proceedings in the Court, including the fixing of scales of costs and witnesses' expenses so payable;

(k) the practice and procedure to be followed in the enforcement of judgments and orders of the Court;

(l) the evidence that may be given at the trial of any proceedings by affidavit, and the circumstances in which evidence may be so given, but so as not to dispense with the attendance of any witness whose attendance for cross-examination is required by any party to the proceedings, and the means by which particular facts may be proved, and the mode in which evidence may be given, in any proceedings;

(m) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence;

(n) prescribing the cases in which security may be required in respect of any proceedings, and the form of any such security, and the manner in which it is to be given, or whether it is to be given to the satisfaction of the registrar;

(o) the payment of money into or out of the Court;

(p) the times for doing any matter or thing for the purposes of this Act or the rules in or in connection with any proceedings;

(q) the giving of notices required by or under this Act to be given;

(r) the amendment, whether by a party or by order of the Court, of any document filed by a party;

(s) the striking out, by order of the Court, of the whole or any part of a statement of claim or a document filed by a party; and

(t) all matters that by this Act (sections 150 and 171 excepted) are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The rules may make provision for or with respect to the bringing of money into court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to—

(a) prescribing the manner in which money may be so brought into court;

(b) without affecting the generality of paragraph (a), deeming money to be brought into court if there is filed a security given by a licensed insurer under the Workers' Compensation Act, 1926, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942;

(c) requiring the insurer who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the insurer; and

(d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into court.

(3) Different rules may be made to apply in different circumstances.

(4) After the commencement of this Act no power conferred by any Act upon the Judges or a majority of Judges or any number of Judges or a Judge to make rules shall be exercised otherwise than by the Chief Judge and any four other Judges making in respect of that matter rules under and in accordance with this Act.

(5)

(5) Any rules made under any power conferred upon the Judges or a majority of Judges or any number of Judges or a Judge by any Act (other than this Act and the District Courts Act, 1912), and in force immediately before the commencement of this Act shall continue in force as though made under this Act.

Gazettal and Parliamentary review.

162. (1) A rule shall—

(a) be published in the Gazette;

(b) take effect on and from the date of publication or a later date specified in the rule; and

(c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice.

163. Judicial notice shall be taken—

(a) of a rule made or purporting to have been made under this Act and published in the Gazette; and

(b) of the date of its publication.

Conditions precedent.

164. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

PART

PART IV.

THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT.

165. In this Part— Interpretation: Pt. IV.

"appointed place" means place for the time being specified in a proclamation under section 172;

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

166. The Court shall have jurisdiction in respect of all crimes and misdemeanours (other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955), and generally shall have the same jurisdiction and authority, civil and criminal, as each Court of Quarter Sessions had immediately before the commencement of this Act. Criminal and special jurisdiction of the Court.

167. Subject to section 194, Courts of Quarter Sessions are abolished. Abolition of Courts of Quarter Sessions.

168. (1) A reference in any instrument to a Court of Quarter Sessions shall be read and construed as a reference to the Court in its criminal and special jurisdiction. References to Courts of Quarter Sessions.

(2) In subsection (1), the reference to a Court of Quarter Sessions includes a reference to a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.

169.

Judges.

169. (1) A Judge exercising the criminal and special jurisdiction of the Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions would have had, in relation to the like proceedings in a Court of Quarter Sessions, had this Act not been enacted.

(2) A Judge exercising the criminal and special jurisdiction of the Court shall be the sole Judge at the trial of all civil or criminal issues therein, and at the hearing of any application, or the making of any order in reference thereto, and in all other matters relating to the exercise of that jurisdiction.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall be read and construed as a reference to a Judge exercising the criminal and special jurisdiction of the Court.

Clerk of the Peace.

170. The Clerk of the Peace has, in relation to the Court in its criminal and special jurisdiction and to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as he had, in relation to Courts of Quarter Sessions and to proceedings in those Courts, immediately before the commencement of this Act.

Regulations: practice and procedure.

171. (1) The Governor may make regulations for or with respect to regulating and prescribing the practice and procedure of the Court in relation to any proceedings in the Court in its criminal and special jurisdiction.

(2) The regulations made under this section may provide that any provisions of this Act that would, but for this subsection, not apply to or in respect of any proceedings in the Court in its criminal and special jurisdiction shall, to the extent specified in the regulations so made, apply to or in respect of those proceedings.

(3)

(3) The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the Court in its criminal and special jurisdiction or any documents that may be or are issued by or in respect of the Court in that jurisdiction, have effect subject to the regulations made under this section.

(4) Different regulations may be made under this section to apply in different circumstances.

Appointed places.

172. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its criminal and special jurisdiction.

Directions as to sittings.

173. The Governor may, by proclamation, direct that the Court shall sit in its criminal and special jurisdiction at a specified appointed place at specified times.

General provisions as to sittings.

174. (1) Subject to this Part—

(a) the Court may sit simultaneously at different appointed places in its criminal and special jurisdiction;

(b) a Judge shall preside at such sittings of the Court in its criminal and special jurisdiction at such appointed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court in its criminal and special jurisdiction at the one appointed place.

(2)

(2) Where a sitting of the Court in its criminal and special jurisdiction is to be held and the Judge who is to preside at that sitting is not present at the time appointed for the sitting to commence, any justice of the peace may adjourn the sitting to such time as the justice deems convenient.

Hearing of appeals at proclaimed places.

175. Notwithstanding anything in this Part, a Judge sitting at any proclaimed place may, whether or not that proclaimed place is an appointed place, hear and dispose of any appeal made to the Court in its criminal and special jurisdiction.

PART V.

General Provisions.

Order to Judge or officer.

176. If a Judge or officer of the Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring the act to be done, by order direct the Judge or officer to do the act.

Privilege.

177. No privilege shall be allowed to any barrister, solicitor or other person to exempt him from the provisions of this Act.

Proclamations.

178. (1) In this section, "proclamation" means proclamation under this Act, not being the proclamation under section 2.

(2) A power conferred by any provision of this Act to make a proclamation includes the power to revoke or amend that proclamation from time to time.

(3) A proclamation shall—

(a) be published in the Gazette; and

(b) take effect on and from the date of publication or a later date specified in the proclamation.

Judges to meet and make recommendations.

179. (1) The Judges shall assemble at least once in every six months for the purpose of—

(a) considering the operation of this Act and the rules;

(b) considering the working of the offices of the Court; and

(c) inquiring into and examining any defects which appear to exist in the system of procedure or the administration of justice in the Court.

(2) The Judges shall at least once in every six months furnish a report to the Attorney-General as to what (if any) legislation or rules, regulations, by-laws or ordinances it would, in their judgment, be expedient to enact or make for the better administration of justice in the Court.

PART VI.

Repeals, Amendments, Savings and Transitional Provisions.

Division 1.—*General.*

Repeals.

180. Each Act mentioned in Schedule 1 is repealed.

Amendments.

181. Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

182.

182. A repeal made by section 180 or an amendment made by section 181 shall not revive anything not in force or existing immediately before the commencement of this Act. Non-revivor. No. 52, 1970, s. 9.

183. Except as provided in this Part, nothing in this Part limits any saving in the Interpretation Act, 1897. Operation of Interpretation Act, 1897.

DIVISION 2.—*The Civil Jurisdiction of the Court.*

184. In this Division— Interpretation: Pt. VI, Div. 2.

"district" means district referred to in section 5 of the District Courts Act, 1912;

"former Court" means a District Court established under the District Courts Act, 1912, and includes a court referred to in an instrument as "the District Court" or "the district court";

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act;

"the new Court" means the Court.

185. (1) A proclamation made under section 4 (1) of the District Courts Act, 1912, and in force immediately before the commencement of this Act, shall— Savings as to places, sittings, Judges and officers.

(a) in so far as it specifies the towns and places at which former Courts shall be holden—be deemed to be a proclamation under section 31 (2) specifying proclaimed places; and

(b)

(b) in so far as it specifies the times at which former Courts shall be holden—shall be deemed to be a proclamation under section 32 (2) directing that the new Court shall sit in its civil jurisdiction at those times at the proclaimed places specified therein.

(2) A person appointed as a judge under section 14 of the District Courts Act, 1912, and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed as a Judge under section 13 of this Act.

(3) A person appointed to sit and act as a judge under section 19A of the District Courts Act, 1912, and whose appointment continues in force immediately before the commencement of this Act, shall be deemed to have been appointed to act as a Judge under section 18 of this Act, but he shall not, by virtue of this subsection, hold office as such for a time longer than that for which he was appointed to exercise jurisdiction under section 19A of the District Courts Act, 1912.

(4) The person who was, immediately before the commencement of this Act, the Chairman of the District Court Judges shall be deemed to have been appointed as the Chief Judge under section 13 (4).

(5) A person appointed as a judge under the District Courts Act, 1912, and not holding office as such immediately before the commencement of this Act, and the widow of any such person, shall, notwithstanding anything in this Act, have the same rights as to salary, pension or otherwise which he or she would have had if this Act had not been enacted.

(6) A person holding office immediately before the commencement of this Act as the registrar of the District Court of the Metropolitan District holden at Sydney under section 21 (2) (a) of the District Courts Act, 1912, or as an

assistant

assistant registrar of that Court under section 24 of that Act shall be deemed to have been appointed as the registrar for Sydney under section 19 (2) of this Act or as an assistant registrar for Sydney under section 22 (1) of this Act, as the case may require.

(7) A person holding office immediately before the commencement of this Act as a bailiff for a former Court appointed under section 26 (3) of the District Courts Act, 1912, or an officer appointed under section 26 (4) of that Act to assist a bailiff for a former Court, shall be deemed to have been appointed under section 25 (3) of this Act as a bailiff, or under section 26 (1) of this Act as an assistant bailiff, as the case may require, of the new Court for the proclaimed place that is the place at which the former Court was ordered, under section 4 (1) of the District Courts Act, 1912, to be holden.

Pending proceedings, etc.

186. (1) Subject to the rules, and unless the Court otherwise orders—

(a) any proceedings pending in a former Court immediately before the commencement of this Act shall be continued in and disposed of by the new Court sitting at the proclaimed place that is the place at which the former Court was holden immediately before the commencement of this Act, but otherwise those proceedings shall be continued and disposed of as if this Act had not been enacted;

(b) any judgment or order of the new Court in proceedings referred to in paragraph (a) shall be enforceable in accordance with this Act and the rules;

(c) except as provided in paragraph (d), any judgment or order of a former Court shall be enforceable in accordance with this Act and the rules by the new Court sitting at the proclaimed place at which the

former

former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act;

(d) any judgment or order of a former Court shall, as regards any step taken in the enforcement of the judgment or order before the commencement of this Act, be enforceable by the new Court sitting at the proclaimed place at which the former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act, but otherwise shall be enforceable as if this Act had not been enacted; and

(e) the entitlement of any party to costs in respect of proceedings commenced before the commencement of this Act and completed after that commencement shall be ascertained as if this Act had not been enacted.

(2) For the purposes of continuing any proceedings in, or enforcing any judgment or order in, the new Court sitting at a proclaimed place, that place shall be deemed to be the proper place in relation to those proceedings or the proceedings in which the judgment was given or entered up or the order was made, as the case may require.

(3) Unless the Supreme Court in a particular case otherwise orders—

(a) Division 7 of Part III (section 126 excepted) applies to and in respect of proceedings in, or a judgment or order of, a former Court as if they or it were proceedings in, or a judgment or order of, the new Court; and

(b) any appeal made under Part VI of the District Courts Act, 1912, and pending in the Supreme Court immediately before the commencement of this Act shall be deemed to have been made under Division 7 of Part III of this Act.

187. (1) In an instrument— References to District Court in existing instruments.

(a) subject to paragraphs (b) and (c), a reference to a former Court shall be read and construed as a reference to the new Court;

(b) subject to paragraph (c), a reference to a former Court within the jurisdiction of which, or within the district of which, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(c) a reference to a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) In an instrument, a reference to the Metropolitan District Court (however expressed) shall be read and construed as a reference to the new Court sitting at Sydney.

(3) Where under any instrument any power is vested in a former Court, the power shall be exercised by the new Court in all respects as it might have been exercised immediately before the commencement of this section, but in accordance with this Act and the rules.

188.

188. (1) Subject to subsection (3), in an instrument— References to District Court judges in existing instruments.

(a) a reference to the Chairman of the District Court Judges shall be read and construed as a reference to the Chief Judge;

(b) subject to paragraphs (c) and (d), a reference to a District Court judge shall be read and construed as a reference to a Judge appointed under this Act;

(c) subject to paragraph (d), a reference to a District Court judge within whose jurisdiction, or within whose district, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(d) a reference to a District Court judge occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) Subject to subsections (1) (c) and (d) and (3), where under an instrument a power (other than a power to make rules) is vested in the District Court judges, or in any number of them, or a majority of them, or any one of them that power shall be exercised by the new Court in all respects as those judges or that judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.

(3)

(3) The Governor may direct by proclamation that— No. 52, 1970, s. 24 (7).

(a) subsection (1) (c) and (d) shall not apply to a reference specified in the proclamation; or

(b) subsection (2) shall not apply to any power specified in the proclamation,

and the proclamation shall have effect accordingly, but subject to subsection (5).

(4) A proclamation under subsection (3) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication of the proclamation in the Gazette.

(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation under subsection (3) has been laid before it, disallowing the proclamation or any part of it, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

189. In an instrument— References to registrars and bailiffs in existing instruments.

(a) subject to paragraphs (b) and (c), a reference to a registrar or bailiff of a former Court shall be read and construed as a reference to a registrar or bailiff of the new Court;

(b) subject to paragraph (c), a reference to the registrar or a bailiff of a former Court shall, if the reference to that former Court is, under section 187 (1) (b) or (c), to be read and construed as a reference to the new Court sitting at a proclaimed place specified

in

in section 187 (1) (b) or specified in or determined in accordance with the rules, be read and construed as a reference to the registrar or a bailiff of the new Court for that place; and

(c) a reference to a registrar or bailiff of a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the registrar or a bailiff of the new Court for the proclaimed place specified in or determined in accordance with the rules.

References to writs, etc., in existing instruments.

190. (1) In an instrument—

(a) a reference to a writ of fieri facias issued out of a former Court shall be read and construed as a reference to a writ of execution issued out of the new Court; and

(b) a reference to a writ of capias ad satisfaciendum issued out of a former Court shall be read and construed as a reference to a writ against the person issued out of the new Court.

(2) In an instrument, a reference to an action of or proceedings in ejectment in a former Court includes a reference to proceedings for possession of land under Division 8 of Part III.

Provisions as to practice and procedure in existing instruments.

191. The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the new Court or any documents that may be or are issued by or in respect of the new Court, have effect subject to the rules.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court.*

192. In this Division— Interpretation: Pt. VI, Div. 3.

"appointed place" has the meaning ascribed to it by section 165;

"former Court" means a Court of Quarter Sessions;

"the new Court" means the Court.

193. A proclamation made under section 569 of the Crimes Act 1900 appointing the times and places at which former Courts shall be held, and in force immediately before the commencement of this Act, shall— Savings as to places and sittings.

(a) in so far as it specifies the places at which former Courts shall be held—be deemed to be a proclamation under section 172 (2) specifying appointed places; and

(b) in so far as it specifies the times at which former Courts shall be held—be deemed to be a proclamation under section 173 directing that the new Court shall sit in its criminal and special jurisdiction at those times at the appointed places specified therein.

194. Notwithstanding anything in Part IV or Division 1, where any proceedings were pending in a former Court immediately before the commencement of this Act— Pending proceedings.

(a) that former Court shall continue in existence for the purpose only of the hearing and disposing of those proceedings; and

(b) those proceedings shall be heard and disposed of in all respects as if this Act had not been enacted.

SCHEDULE

SCHEDULE 1.

Sec. 180.

REPEALS.

Year and number of Act.	Short title of Act.
1901, No. 48 ..	Inter-state Debts Recovery Act, 1901.
1912, No. 23 ..	District Courts Act, 1912.
1920, No. 9 ..	Quarter Sessions Enabling Act, 1920.
1924, No. 30 ..	District Courts (Judges Pensions) Act, 1924.
1928, No. 7 ..	Supreme Court and District Courts (Judges) Act, 1928.
1932, No. 34 ..	District Courts (Validation and Amendment) Act, 1932.
1932, No. 35 ..	District Courts (Further Validation and Amendment) Act, 1932.
1936, No. 4 ..	District Courts (Amendment) Act, 1936.
1940, No. 44 ..	Attachment of Wages Limitation Act, 1940.
1949, No. 44 ..	District Courts (Amendment) Act, 1949.
1951, No. 19 ..	District Courts (Amendment) Act, 1951.
1955, No. 20 ..	District Courts (Amendment) Act, 1955.
1958, No. 11 ..	District Courts (Amendment) Act, 1958.
1961, No. 18 ..	District Courts and Small Debts Recovery (Amendment) Act, 1961.

SCHEDULE

SCHEDULE 2.

Sec. 181.

AMENDMENT OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
60 Vic. No. 23	Municipal Council of Sydney Electric Lighting Act 1896–1928	Section 1— Omit "1896–1928", insert instead ", 1896". Section 38— Omit "; and in every such proceeding the defendant may, except in the Supreme Court, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon".
1898, No. 11..	Evidence Act, 1898	Section 43B— Omit the section.
1899, No. 18..	Landlord and Tenant Act, 1899	Section 1— Omit the matter relating to Part III. Section 2A (1)— Omit "or proceedings under section seventeen of this Act". Part III— Omit the Part.
1899, No. 20..	Police Regulation Act, 1899	Section 26 (1)— Omit "and may, except in the Supreme Court, plead the general issue,".
1899, No. 24..	Stage-carriages Act, 1899	Section 14— Omit the section, insert instead the following section:— Commencement of action. 14. An action against any person for anything done in pursuance of this Act shall be commenced within three months after the act is committed and not afterwards.
1900, No. 25..	Real Property Act, 1900	Section 105 (1)— (a) Omit "the registrar or bailiff of any", insert instead "a bailiff of the"; (b) Omit "or District Court". Section 105 (2)— Omit "the registrar or bailiff of any", insert instead ", subject to section 110 (6) of the District Court Act, 1973, a registrar of the".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1900, No. 40..	Crimes Act 1900	Section 563 (1)— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue, and give the special matter in evidence thereupon". Section 563 (3)— Omit the subsection. Sections 568–571 (inclusive)— Omit the sections.
1901, No. 5 ..	Police Offences Act, 1901	Section 114 (3) and (5)— Omit the subsections.
1901, No. 8 ..	Judgment Creditors' Remedies Act, 1901	Section 13 (2)— Omit "or to the sheriff of any district". Section 17 (1)— Omit "warrant or". Section 24— Omit the section.
1901, No. 9 ..	Anatomy Act, 1901	Section 20 (2)— Omit the subsection.
1901, No. 28..	Hawkers and Pedlers Act, 1901	Section 26— (a) Omit "and in such action the defendant, except in the Supreme Court, may plead the general issue and at the trial give this Act and the special matter in evidence,"; (b) Omit ", and if any such action is in a District Court and judgment is given against the plaintiff or the plaintiff is nonsuited or discontinues such action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has in other cases".

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1901, No. 33..	Inclosed Lands Protection Act, 1901	Section 9— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue and give this Act and the special matter in evidence at the trial of such action".
1901, No. 45..	Married Women's Property Act, 1901	Section 1— Omit "Women's Property", insert instead "Persons (Property and Torts)". Section 22 (1)— Omit "within whose jurisdiction", insert instead "sitting at the proclaimed place nearest to the place where". Section 22 (3)— Omit the subsection, insert instead the following subsection:— (3) Section 128 of the District Court Act, 1973, applies to and in respect of any such application to the District Court as if the application were an action within the meaning of that Act.
1902, No. 27..	Justices Act, 1902	Section 142— Omit the section. Section 145— Omit the section.
1902, No. 66..	Pawnbrokers Act, 1902	Section 46— Omit the section.
1908, No. 31..	Pure Food Act, 1908	Section 20— Omit "Division 7 of Part III of the District Courts Act, 1912–1936, shall apply, mutatis mutandis, to any such appeal.".
1912, No. 30..	Government Railways Act, 1912	Section 144 (4)— Omit the subsection.
1912, No. 31..	Jury Act, 1912	Section 3— Omit "any district court", insert instead "the District Court". Section 5 (a)— Omit "district courts, chairmen of courts of quarter sessions", insert instead "the District Court".

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 8— Omit "or any court of quarter sessions or district court". Section 15 (1)— Omit "a district court or a court of quarter sessions", insert instead "the District Court". Section 15 (2)— Omit "district court, or in any court of quarter sessions", insert instead "the District Court". Section 22— Omit ", or a district court, or court of quarter sessions", insert instead "or the District Court". Section 27 (1)— Omit "courts of quarter sessions", insert instead "the District Court". Section 29— Insert at the end of the section the following new subsection:— (2) Subject to the provisions of this Act and of any other Act in force for the time being, where proceedings in the District Court in its civil jurisdiction are to be tried with a jury, all issues of fact in the proceedings shall be tried, and all damages and sums of money recoverable in those proceedings shall be assessed, before a Judge of that Court, by a jury consisting of four persons duly qualified according to law as jurors, and returned and chosen as hereinafter mentioned. Section 30— Omit "said court" wherever occurring, insert instead "Supreme Court". Section 30A— After "civil trial" insert "in the Supreme Court or the District Court". Section 32 (1)— Omit "courts of quarter sessions", insert instead "District Court". Section 32 (2A)— After section 32 (2) insert the following new subsection:— (2A) Every such precept returnable in the District Court in its civil juris-

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 32 (2A)—*continued.* diction shall be under the hand of the registrar for the proclaimed place at which it is returnable. Section 32 (3)— (a) Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction"; (b) Omit "a chairman of a court of quarter sessions", insert instead "a Judge of the District Court". Section 36 (2)— Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction". Section 36 (3)— After section 36 (2) insert the following new subsection:— (3) No such precept returnable in the District Court in its civil jurisdiction shall require the sheriff to summon at any one time more than forty-eight or less than twelve jurors. Section 37— Omit ", or a district court, or a court of quarter sessions", insert instead "or the District Court". Section 45 (1)— Omit "a sitting of a court of quarter sessions", insert instead "the District Court". Section 57 (1)— Omit " a court of quarter sessions", insert instead "the District Court". Section 70— Omit "courts of quarter sessions", insert instead "the District Court". Section 72— Omit the section. Section 86— (a) Omit from paragraph (b) "a court of quarter sessions or by a chairman thereof", insert instead "the District Court in its criminal and special jurisdiction or by a Judge of the District Court exercising that jurisdiction";

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	(b) After paragraph (b) insert the following new paragraph:— (c) all fines imposed under this Act by the District Court in its civil jurisdiction shall be levied and recovered in accordance with the rules of the District Court.
1912, No. 73..	Irrigation Act, 1912	Section 17c (4)— Omit the subsection.
1913, No. 7 ..	Crown Lands Consolidation Act, 1913	Section 249— Omit "And in every such proceeding, other than a proceeding in the Supreme Court, the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon.".
1919, No. 41..	Local Government Act, 1919	Section 580 (8)— Omit the subsection.
1924, No. 42..	Administration of Justice Act, 1924	Section 2— (a) Omit "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901—*ss.* 8, 9."; (b) Omit "DIVISION 2.—*District Courts Act*, 1912—*s.* 10.". Part III— Omit the heading "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901.". Section 8— Omit the section. Section 9— Omit the section. Part III— Omit the heading "DIVISION 2.—*The District Courts Act*, 1912.". Section 10— Omit the section.
1930, No. 18..	Transport Act, 1930	Section 168 (4)— (a) After "recovered" insert "in the District Court"; (b) Omit "district court in such district court as the Transport Appeal Court directs", insert instead "District Court". Section 233 (4)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1932, No. 3 ..	Ministry of Transport Act, 1932	Section 17 (4)— Omit the subsection.
1932, No. 31..	Transport (Division of Functions) Act, 1932	Section 28 (4)— Omit the subsection.
1935, No. 47..	Maritime Services Act, 1935	Section 40 (5)— Omit the subsection.
1937, No. 35..	Statute Law Revision Act, 1937	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1939, No. 29..	Drainage Act, 1939	Section 71 (1)— After "debt" insert "or liquidated demand". Section 71 (2)— Omit the subsection.
1947, No. 41..	Jury (Amendment) Act, 1947	Section 6 (1) and (3)— Omit the subsections.
1950, No. 22..	Electricity Commission Act, 1950	Section 100 (7)— Omit the subsection.
1951, No. 11..	Sydney Harbour Transport Act, 1951	Section 34 (7)— Omit the subsection.
1951, No. 43..	Matrimonial Causes (Amendment) Act, 1951	Section 1 (3)— Omit the subsection. Section 2 (1)— Omit the subsection.
1953, No. 41..	Judges' Pensions Act, 1953	Section 2— From the definition of "Judge" omit "Chairman of the District Court Judges, District Court judge", insert instead "Chief Judge or Judge of the District Court'.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1953, No. 41—*continued*	Judges' Pensions Act, 1953—*continued*	Section 2B— After section 2A insert the following new section:— Continuity of judicial office in the District Court. 2B. The office of Chairman of the District Court Judges and of District Court judge under the District Courts Act, 1912, shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, under the District Court Act, 1973. Section 8 (3)— Omit "or an acting judge of any District Court", insert instead "an acting judge of a District Court (under the District Courts Act, 1912), or an acting Judge of the District Court (under the District Court Act, 1973)". Section 13 (2)— Omit the subsection.
1954, No. 36..	Grain Elevators Act, 1954	Section 56 (7)— Omit the subsection.
1957, No. 28..	Attachment of Wages Limitation Act, 1957	Section 3— Omit the section.
1961, No. 29..	Industrial Arbitration (Basic Wage) Amendment Act, 1961	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1963, No. 59..	State Planning Authority Act, 1963	Section 70 (7)— Omit the subsection.
1964, No. 37..	Industrial Arbitration (Amendment) Act, 1964	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 12..	Supreme Court and Circuit Courts (Amendment) Act, 1965	Section 8— Omit the section. Schedule— Omit so much as relates to the District Courts Act, 1912.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1965, No. 32..	Law Reform (Miscellaneous Provisions) Act, 1965	Section 3— Omit so much as relates to Parts II, VII, VIII. Part II— Omit the Part. Section 13— Omit the section. Section 14— Omit the section. Part VII— Omit the Part. Part VIII— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 33..	Decimal Currency Act, 1965	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1967, No. 35..	National Parks and Wildlife Act, 1967	Section 45 (1)— After "debt" insert "or liquidated demand". Section 45 (2)— Omit the subsection.
1967, No. 86..	Industrial Arbitration (Basic Wage) Amendment Act, 1967	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 3 ..	Administration of Justice Act, 1968	Section 3— Omit so much as relates to Part IX. Part IX— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968	Section 44 (7)— Omit the subsection.
1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968	Section 53 (9)— Omit the subsection.

SCHEDULE

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 11..	Courts of Petty Sessions (Civil Claims) Act, 1970	Section 12 (2)— Omit "a District Court having jurisdiction in the matter under section seven of the District Courts Act, 1912", insert instead "the District Court sitting at the nearest proclaimed place to the place— (a) where the defendant, or any one of two or more defendants, is resident or carries on his business; or (b) where the cause of action arose". Section 12 (3)— Omit "District Court to which the action is ordered to be transferred", insert instead "registrar of the District Court for the proclaimed place mentioned in the order". Section 12 (4)— (a) Omit "a District Court", insert instead "the District Court"; (b) Omit "District Courts Act, 1912", insert instead "District Court Act, 1973"; (c) Omit "that District Court", insert instead "the District Court". Section 12 (5)— Omit "a District Court", insert instead "the District Court".
1970, No. 29..	Dairy Industry Authority Act, 1970	Section 81 (9)— Omit the subsection.
1970, No. 52..	Supreme Court Act, 1970	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 60..	Minors (Property and Contracts) Act, 1970	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 95..	State Pollution Control Commission Act, 1970	Section 30 (9)— Omit the subsection.

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 96..	Summary Offences Act, 1970	Section 65 (5)— Omit the subsection.
1970, No. 97..	Waste Disposal Act, 1970	Section 54 (9)— Omit the subsection.

BY AUTHORITY
V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973
[$1.20]

No. , 1973.

A BILL

To establish a District Court of New South Wales; to provide for the appointment of, and the powers, authorities, duties and functions of, Judges and other officers of the Court; to empower the Court to hear and dispose of certain civil and criminal proceedings; to abolish the several District Courts and Courts of Quarter Sessions; to repeal the District Courts Act, 1912, and certain other Acts; to amend the Crimes Act 1900 and certain other Acts; and for purposes connected therewith.

[Mr McCaw—1 *March*, 1973.]

BE

4499 210—A

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "District Court Act, 1973".

Commencement.

2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–7.

PART II.—THE DISTRICT COURT OF NEW SOUTH WALES—*ss.* 8–18.

DIVISION 1.—*Establishment of the Court*—*ss.* 8–11.

DIVISION 2.—*Judges*—*ss.* 12–18.

PART III.—THE CIVIL JURISDICTION OF THE COURT —*ss.* 19–164.

DIVISION 1.—*Officers and General Provisions*—*ss.* 19–43.

Subdivision 1.—*Registrars*—*ss.* 19–24.

Subdivision 2.—*Bailiffs*—*ss.* 25–30.

Subdivision 3.—*Sittings of the Court*—*ss.* 31–39.

Subdivision

District Court.

Subdivision 4.—*Change of venue—s.* 40.

Subdivision 5.—*Parties—ss.* 41, 42.

Subdivision 6.—*Right of appearance—s.* 43.

DIVISION 2.—*Actions: Jurisdiction—ss.* 44–51.

Subdivision 1.—*General jurisdiction in relation to actions—ss.* 44–48.

Subdivision 2.—*Splitting and dividing of causes of action and abandonment—ss.* 49, 50.

Subdivision 3.—*Jurisdiction by consent—s.* 51.

DIVISION 3.—*Actions: Procedure—ss.* 52–83.

Subdivision 1.—*General—s.* 52.

Subdivision 2.—*Commencement of actions—ss.* 53–55.

Subdivision 3.—*Defences—s.* 56.

Subdivision 4.—*Order for judgment and judgment by default—ss.* 57, 58.

Subdivision 5.—*Judgment by confession or agreement—ss.* 59–62.

Subdivision 6.—*Arbitration—s.* 63.

Subdivision 7.—*Witnesses, evidence and ancillary matters—ss.* 64–70.

Subdivision 8.—*Trial and jury—ss.* 71–80.

Subdivision 9.—*Judgments and orders—ss.* 81–83.

DIVISION 4.—*Actions: Enforcement of Judgments—ss.* 84–114.

Subdivision 1.—*General—ss.* 84–86.

Subdivision 2.—*Payment of judgment debt—ss.* 87–89.

Subdivision 3.—*Examination of judgment debtor—ss.* 90–96.

Subdivision

Subdivision 4.—*Attachment of debts*—*ss.* 97–106.

Subdivision 5.—*Writ of execution*—*ss.* 107–112.

Subdivision 6.—*Writ against the person*—*ss.* 113, 114.

DIVISION 5.—*Actions*: *Interpleader*—*ss.* 115–118.

DIVISION 6.—*Actions*: *Costs*—*ss.* 119–124.

DIVISION 7.—*Actions*: *New Trial and Appeal*—*ss.* 125–131.

DIVISION 8.—*Miscellaneous Jurisdiction*—*ss.* 132–142.

Subdivision 1.—*General*—*s.* 132.

Subdivision 2.—*Possession of land and equity proceedings*—*ss.* 133–139.

Subdivision 3.—*Temporary injunctions*—*ss.* 140–142.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court*—*ss.* 143–148.

Subdivision 1.—*Transfer of proceedings from Supreme Court*—*ss.* 143, 144.

Subdivision 2.—*Transfer of proceedings to Supreme Court*—*ss.* 145–148.

DIVISION 10.—*Miscellaneous Provisions*—*ss.* 149–160.

DIVISION 11.—*Rules*—*ss.* 161–164.

PART IV.—THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT—*ss.* 165–175.

PART V.—GENERAL PROVISIONS—*ss.* 176–179.

PART VI.—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS—*ss.* 180–194.

DIVISION 1.—*General*—*ss.* 180–183.

DIVISION 2.—*The Civil Jurisdiction of the Court—ss.* 184–191.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court—ss.* 192–194.

SCHEDULES.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: general.

"action" means action in the Court, but does not include any proceedings under Division 8 of Part III or under Part IV;

"admitted set-off", in relation to an action, means set-off admitted by the plaintiff in the statement of claim lodged by him to commence the action or, where a defendant pleads a cross-claim, by the defendant in the prescribed notice of the cross-claim;

"barrister" means person who is on the roll of barristers in the Supreme Court;

"Chief Judge" means Chief Judge of the Court;

"corporation" includes any body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person;

"file", in relation to any proceedings, means lodge with the registrar for the proper place in relation to the proceedings, for inclusion in the record of the Court;

"Judge" means Judge of the Court;

"judgment", in relation to an action, means judgment given or entered up in the action;

"land" includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate

or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity;

"minor" means person under the age of eighteen years;

"officer", in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"prescribed" means prescribed by this Act or the rules;

"proceedings" means proceedings in the Court;

"proclaimed place" means place for the time being specified in a proclamation under section 31;

"proper place", in relation to any proceedings in the Court in its civil jurisdiction—

(a) where there has been no change of venue in respect of the proceedings—means the proclaimed place at which the proceedings were commenced;

(b) where there has been only one change of venue in respect of the proceedings—means the proclaimed place to which the venue was changed; or

(c) where there have been two or more changes of venue in respect of the proceedings—means the proclaimed place to which the venue was last changed;

"registry", in relation to a proclaimed place, means the office of the registrar for the proclaimed place;

"rules" means rules made under this Act;

"solicitor"

"solicitor" means attorney, solicitor and proctor of the Supreme Court;

"statement of claim" means ordinary statement of claim or statement of liquidated claim, as referred to in section 53;

"the Court" means the District Court of New South Wales;

"the registrar", in relation to any proceedings, means the registrar for the proper place in relation to the proceedings;

"writ against the person" means writ against the person issued under section 113;

"writ of execution" means writ of execution issued under section 107.

(2) A reference in this Act—

(a) to the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under section 58, 60 or 61; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with section 58, 60 or 61.

(3) A reference in this Act to the commencement of proceedings at a proclaimed place (however expressed) is a reference to the commencement of those proceedings by the lodging of the statement of claim or other document commencing the proceedings with the registrar for that place.

(4) A reference in this Act to the issue of a document at a proclaimed place (however expressed) is a reference to the issue of that document by the registrar for that place.

(5) A reference in this Act to a stay of proceedings (however expressed) includes a reference to a stay of enforcement of the judgment arising from the proceedings.

(6) A reference in this Act to a stay of enforcement of a judgment includes a reference to a stay of the issue of—

(a) an examination summons under section 91 (1);

(b) a warrant under section 92 (4); and

(c) a charging order under the Judgment Creditors' Remedies Act, 1901,

in respect of the judgment debt.

Interpretation: nearest proclaimed place.

5. (1) A reference in this Act to the nearest proclaimed place to another place (however expressed) is a reference to the proclaimed place the distance between the principal registry for which and that other place is shorter than the distance between any other principal registry and that other place.

(2) In subsection (1)—

"distance" means distance computed in accordance with the rules;

"principal registry", in relation to a proclaimed place, means—

(a) where there is only one registry for the proclaimed place—that registry; or

(b) where there are two or more registries for the proclaimed place—the registry specified in, or determined in accordance with, the rules as being the principal registry for the proclaimed place.

(3) The Governor may, at his discretion, by proclamation, specify an address or a place at which the principal registry for a proclaimed place shall be deemed to be situated,

and

and that principal registry shall, for the purposes of subsection (1), be deemed to be situated at the address or place so specified, notwithstanding that it may be situated elsewhere.

Order on terms. No. 52, 1970, s. 21.

6. Where under this Act or the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

Application of certain provisions of this Act.

7. The provisions of Part III and Division 2 of Part VI and the rules—

(a) apply to and in respect of proceedings in the Court in its civil jurisdiction; and

(b) except as provided by Part IV, do not apply to or in respect of proceedings in the Court in its criminal and special jurisdiction.

PART II.

THE DISTRICT COURT OF NEW SOUTH WALES.

DIVISION 1.—*Establishment of the Court.*

The Court.

8. (1) There shall be a District Court of New South Wales.

(2) The Court shall be a court of record.

(3) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

9.

9. (1) The Court shall have a civil jurisdiction, consisting of— Jurisdiction of the Court generally.

(a) its jurisdiction conferred by Part III; and

(b) the jurisdiction conferred by or under any other Act or law on the Court, not being its jurisdiction referred to in subsection (2).

(2) The Court shall have a criminal and special jurisdiction, consisting of—

(a) its jurisdiction conferred by Part IV; and

(b) the jurisdiction conferred by or under any other Act or law on the Court in its criminal and special jurisdiction, its criminal jurisdiction or its special jurisdiction.

10. The Court, wherever sitting, shall, subject to this Act, have jurisdiction throughout the whole of New South Wales. State-wide jurisdiction.

11. (1) All proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the Jury Act, 1912, be heard and disposed of before a Judge, who shall constitute the Court. Single Judge to constitute the Court. No. 52, 1970, s. 40.

(2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before a registrar or other officer of the Court.

DIVISION 2.—*Judges.*

12. The Court shall be composed of a Chief Judge and such other Judges as the Governor may from time to time appoint. Composition of the Court.

13.

13. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment and qualification of Judges.

(2) A person is qualified to be appointed as a Judge if he is—

(a) a barrister of not less than five years' standing;

(b) a solicitor of not less than seven years' standing; or

(c) a barrister or a solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(3) A barrister or solicitor shall not be appointed to be a Judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately preceding his appointment.

(4) The Governor may, by the commission of a person's appointment as a Judge or by a subsequent commission under the public seal of the State, appoint a Judge to be Chief Judge.

(5) Subject to subsection (6), the Chief Judge shall hold office as Chief Judge so long as he holds office as a Judge.

(6) With the approval of the Governor, the Chief Judge may resign his office as Chief Judge without resigning his office as a Judge.

(7) A Judge shall, while he holds office as such, be deemed to have been appointed a justice of the peace.

14. (1) Subject to the Judges Retirement Act, 1918, a Judge shall hold his office during ability and good behaviour. Judge's tenure.

(2) The Governor may remove a Judge for inability or misbehaviour.

(3) A Judge shall not be removed from office under subsection (2) unless, before being so removed, he has been given twenty-one days' notice of the intention to remove him and he has within that time been given an opportunity of making representations to the Governor and of being heard before the Governor in Council.

(4) A Judge shall not practise as a barrister or solicitor, or be directly or indirectly concerned in the practice or profession of a barrister or solicitor, or be capable of being summoned, or elected, or of sitting, as a member of Parliament.

15. (1) The annual salary— Salaries.

(a) of the Chief Judge shall be $24,650; and

(b) of any other Judge shall be $22,580.

(2) The salary payable to each Judge in accordance with subsection (1), together with any statutory or other allowance, shall be paid to him so long as he continues to hold office.

16. (1) Where there is a vacancy in the office of Chief Judge, or the Chief Judge is absent from his duties, the senior of the other Judges willing to act as Chief Judge shall, if there is no Acting Chief Judge appointed under section 17, act as Chief Judge, and shall, while so acting, have the powers and authorities and fulfil the duties of the Chief Judge. Vacancy in office of or absence of Chief Judge.

(2)

(2) For the purposes only of subsection (1)—

(a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act or the District Courts Act, 1912, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge; and

(b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commissions or, failing any such assignment, according to the order of their being sworn.

Acting Chief Judge.

17. (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his duties.

(2) While holding office, the Acting Chief Judge shall have the powers and authorities and fulfil the duties of the Chief Judge, and shall receive a salary and allowances at the rate provided for the Chief Judge.

Acting Judges.

18. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding six months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed, for the time and subject to the conditions or limitations specified in his commission, shall have the powers and authorities and fulfil the duties of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.

PART

PART III.

THE CIVIL JURISDICTION OF THE COURT.

DIVISION 1.—*Officers and General Provisions.*

Subdivision 1.—*Registrars.*

Registrars.

19. (1) There shall be a registrar of the Court for each proclaimed place.

(2) The registrar for Sydney, and for any other proclaimed place specified for the purposes of this subsection by the Minister by order published in the Gazette, shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(3) The registrar for any proclaimed place not referred to in subsection (2) shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at that place, or if there is no such person, shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at some other place specified for the purposes of this subsection by the Minister by order published in the Gazette.

Consent orders.

20. Except where otherwise expressly provided by this Act or the rules, the registrar for the proper place in relation to any proceedings may exercise the power of the Court to make any order in the proceedings which the Court may make, being an order consented to—

(a) by the parties to the application for the order; and

(b) by any other persons who will be required to comply with the order or to suffer anything to be done under the order.

21.

District Court.

21. (1) The registrar for Sydney may, except where a Judge otherwise orders or the rules otherwise provide, exercise, in or in respect of proceedings in relation to which the proper place is Sydney— Powers of the registrar for Sydney.

(a) the powers of the Court under section 68 (2); and

(b) the powers of the Court to make—

(i) orders for substituted service of process;

(ii) orders in respect of the joinder, misjoinder and nonjoinder of parties;

(iii) orders in respect of the amendment of documents;

(iv) orders that the trial of proceedings be expedited; and

(v) orders that proceedings be heard together.

(2) The registrar for Sydney shall have, and may exercise concurrently with the registrar for any other proclaimed place specified for the purposes of this subsection by the Governor by order published in the Gazette, such of the powers, authorities, duties and functions of the registrar for that other proclaimed place as may be so specified.

(3) Any power, authority, duty or function conferred upon the registrar for Sydney by this section is additional to those otherwise conferred upon him.

22. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint one or more assistant registrars for a proclaimed place. Assistant registrars.

(2) If the Governor by proclamation so directs, the person for the time being holding office as, or discharging the functions of, clerk of petty sessions for a place specified in the proclamation (whether or not that place is a proclaimed place) shall be an assistant registrar for the proclaimed place specified in the proclamation.

23.

Powers, etc., of assistant registrars.

23. (1) An assistant registrar for a proclaimed place shall have and may exercise and discharge such of the powers, authorities, duties and functions of the registrar for that place as may be specified in the rules for the purposes of this subsection.

(2) Any thing done or omitted to be done by an assistant registrar for a proclaimed place in the exercise or discharge of his powers, authorities, duties and functions under this Act shall, for the purposes of this Act, have the same effect as if it had been done or omitted by the registrar for that proclaimed place.

(3) Nothing in this section affects the powers, authorities, duties and functions of any registrar.

Registrar not to act as bailiff.

24. A registrar or an assistant registrar shall not be appointed or act as a bailiff or assistant bailiff.

Subdivision 2.—Bailiffs.

Bailiffs.

25. (1) There shall be at least one bailiff of the Court for each proclaimed place.

(2) If the Governor by proclamation so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place specified in the proclamation shall be a bailiff of the Court for such proclaimed place or proclaimed places as may be specified in the proclamation.

(3) The Chief Judge may, whether or not there is a bailiff for a proclaimed place by virtue of subsection (2), by order in writing appoint persons to be bailiffs of the Court for that proclaimed place.

26.

Assistant bailiffs.

26. (1) A bailiff for a proclaimed place may, by instrument in writing, appoint a sufficient number of persons to be assistant bailiffs of the Court for that proclaimed place.

(2) An assistant bailiff may be dismissed or suspended from office as such by the Chief Judge or any successor of the bailiff who appointed him, as well as by that bailiff.

Duties of bailiffs and assistant bailiffs.

27. (1) A bailiff for a proclaimed place shall, if required by the Judge presiding thereat to do so, attend any sitting of the Court at that place.

(2) The bailiff for a proclaimed place shall, if required by the registrar for that place to do so—

(a) execute any warrant or writ issued out of the Court; or

(b) serve any other document,

whether or not that place is the proper place in relation to the proceedings to which that warrant, writ or other document relates, but where there are two or more bailiffs for that place, the warrant, writ or other document may be executed or served by any one of them.

(3) It shall be the duty of an assistant bailiff for a proclaimed place to assist the bailiff for that place, as directed by the bailiff.

(4) The bailiffs and assistant bailiffs shall in the execution of their duties conform to the rules and, subject to the rules, to the order and direction of any Judge.

(5) A bailiff who undertakes, or is required to undertake, the execution or service of any warrant, writ or other document shall, in respect thereof, be responsible to any party for all the acts and defaults of himself and of any assistant bailiff assisting him in like manner as the sheriff is responsible for the acts and defaults of himself and his officers.

Remuneration of bailiffs and assistant bailiffs.

28. (1) A bailiff appointed under section 25 (3) shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by a bailiff.

(2) An assistant bailiff shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by an assistant bailiff.

Bailiff not to act as registrar.

29. A bailiff or assistant bailiff shall not be appointed or act as a registrar or assistant registrar.

Obstructing bailiffs.

30. A person shall not assault, resist, interrupt or obstruct a bailiff or assistant bailiff in the exercise of any of his powers, authorities, duties or functions under this Act, or rescue or attempt to rescue any property seized or taken by a bailiff or assistant bailiff.

Penalty : $200 or imprisonment for six months, or both.

Subdivision 3.—Sittings of the Court.

Proclaimed places.

31. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its civil jurisdiction, and one of those proclaimed places shall be Sydney.

32. (1) In this section, "year" means any period of twelve months ending on the thirty-first day of December. Directions as to sittings at proclaimed places.

(2) The Governor may, if in his opinion it is expedient to do so, by proclamation, direct that the Court shall, during a specified year, sit in its civil jurisdiction at a specified proclaimed place at specified times.

(3) Where there is no direction under subsection (2) that the Court shall, during a particular year, sit at a particular proclaimed place, the Chief Judge may, if in his opinion it is expedient to do so, by order in writing—

(a) direct that the Court shall, during that year, sit in its civil jurisdiction at that place at specified times; or

(b) direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place shall be continued by the Court sitting at some other proclaimed place specified in the order,

and, while a direction under paragraph (b) remains in force, the proceedings to which it relates shall, if continued, be continued accordingly.

(4) A direction under subsection (2) or (3) may be given in respect of a particular year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

(5) Where a direction is given under subsection (2) having effect, during a particular year, in respect of a particular proclaimed place, a previous direction—

(a) under subsection (3) (a) having effect, during that year, in respect of that proclaimed place; or

(b) under subsection (3) (b) having effect, during that year, in respect of proceedings the proper place in relation to which is that proclaimed place,

shall cease to have effect.

General provisions as to sittings.

33. (1) Subject to this Part, sittings of the Court shall be arranged by the Chief Judge.

(2) Subject to this Part—

(a) the Court may sit simultaneously at different proclaimed places;

(b) a Judge shall preside at such sittings of the Court at such proclaimed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court at the one proclaimed place.

(3) Where a sitting of the Court is directed to be held at a proclaimed place at a time specified under section 32, the registrar for that place shall—

(a) if the Chief Judge so directs; or

(b) if for any reason it is not practicable to be held at that time,

adjourn the sitting to such time as the Chief Judge nominates or, if the Chief Judge does not nominate a time, to such time as the registrar deems convenient.

Permanent substitution of proclaimed place.

34. (1) Where a place ceases to be a proclaimed place by reason of the revocation or amendment of a proclamation made under section 31, the Governor may, by proclamation, direct that—

(a) all proceedings (including proceedings before a registrar or any other officer of the Court) pending before the Court at that place; and

(b) any unsatisfied judgment or order of the Court in proceedings the proper place in relation to which was that place,

may

may be continued or enforced by the Court sitting at such other place as may be specified in the proclamation, and the proceedings shall, if continued, be continued accordingly or the judgment or order enforced accordingly, as the case may require.

(2) The Governor may, in any such proclamation, direct that the records of the Court at the place that has so ceased to be a proclaimed place shall be removed at or within a time stated in the proclamation to the registry for the other place specified therein.

(3) A direction under subsection (1) shall, for the purposes of the definition of "proper place" in section 4 (1), have effect as if it were an order for a change of venue under section 40 in respect of the proceedings to which it relates to the other place specified in the proclamation.

Temporary substitution of proclaimed place.

35. Where the Governor is of the opinion that it is inexpedient or impracticable for the Court to sit at a proclaimed place but that that place should continue to be specified in a proclamation under section 31, he may, by proclamation, direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place may be continued by the Court sitting at such other place as may be specified in the proclamation, and, while the direction remains in force, the proceedings shall, if continued, be continued accordingly.

Adjournment to another proclaimed place.

36. Where all parties appearing in proceedings the hearing of which has commenced before him in court consent, a Judge may direct that those proceedings be continued before him at another proclaimed place at which he is, under section 33 (2) (b), authorised to sit.

37.

Chambers.

37. A Judge may make in chambers any order in respect of any proceedings which he could lawfully make in court and which he considers may be properly made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere.

Reservation of judgment or decision.

38. (1) Where in any proceedings a Judge reserves his judgment or his decision on any question of fact or law, he may—

(a) give his judgment or decision at the proper place in relation to those proceedings or at any other place at which he is authorised by this Act to hear or dispose of those proceedings, at any time, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a); or

(b) draw up in writing his judgment or decision, sign it and forward it to the registrar for that proper place.

(2) Where a registrar receives a judgment or decision forwarded to him under subsection (1) (b), he shall, after giving notice to the parties to the proceedings, read the judgment or decision at the place for which he is registrar at a convenient time specified in the notice, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a).

(3) A judgment or decision given by a Judge under subsection (1) (a) or read by a registrar under subsection (2) shall take effect on the day on which it is so given or read and shall be as valid as if given by the Judge at the hearing of the proceedings to which the judgment or decision relates.

39. Nothing contained in or done under section 32, 35, 36 or 37 has, for the purposes of the definition of "proper place" in section 4 (1), effect as a change of venue, unless the Court orders a change of venue under section 40. Proper place not affected.

Subdivision 4.—Change of venue.

40. (1) Where— Change of venue.

(a) it appears that a fair or unprejudiced trial of any issue cannot otherwise be had; or

(b) for any other reason it appears expedient to the Court to do so,

the Court may, on terms, change the venue of any proceedings.

(2) Where the venue of any proceedings is changed, the registrar for the proclaimed place from which the venue is changed shall forthwith deliver or transmit by post the whole record of the proceedings to the registrar for the proclaimed place to which the venue is changed.

Subdivision 5.—Parties.

41. (1) Subject to this Act and the rules, where a plaintiff has a cause of action against two or more persons having a joint liability, it shall be sufficient if any one or more of those persons is or are served with process in any proceedings, and judgment in the proceedings may be given or entered up and enforced against the person or persons so served notwithstanding that others jointly liable have not been served or sued, or are not within New South Wales. Joint liability.

(2) The provisions of section 97 of the Supreme Court Act, 1970, apply to and in respect of a judgment given or entered up in proceedings in the Court in the same way as they apply to and in respect of a judgment given in proceedings in the Supreme Court.

42.

42. An executor or administrator may sue or be sued in any proceedings in like manner as if he were a party suing or being sued in his own right, and judgment in the proceedings and enforcement of the judgment shall be as prescribed. Executors and administrators.

Subdivision 6.—Right of appearance.

43. (1) A party to any proceedings may appear— Right of appearance.

(a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained; or

(b) if no barrister or solicitor is so retained and—

(i) if that party is a natural person—by himself; or

(ii) if that party is a corporation—by an officer of the corporation authorised in that behalf by the corporation in accordance with the rules,

or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.

(2) A person appearing in any proceedings may address the Court and examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in the Court or before a registrar.

(4) Subsection (3) does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(5)

(5) No amount paid to a person who appears in any proceedings, and who is not a barrister or solicitor retained as mentioned in subsection (1), shall be allowed as costs between party and party.

(6) Subsection (2) has effect subject to this Act and the rules and to any direction given by the Court under section 156 (2).

DIVISION 2.—*Actions: Jurisdiction.*

Subdivision 1.—General jurisdiction in relation to actions.

44. (1) Subject to this Act, the Court shall have jurisdiction to hear and dispose of— Actions.

(a) any personal action at law where the amount claimed does not exceed $10,000, whether on a balance of account or after an admitted set-off or otherwise; or

(b) any action brought to recover an amount not exceeding $10,000, 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.

(2) Without affecting the generality of the provisions of subsection (1) (a), a reference in those provisions to a personal action at law includes a reference to an action for the detention of goods.

(3)

(3) For the purposes of subsection (1) (a), the amount claimed in an action for the detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.

Minors.

45. A minor to whom any wages or other sum arising out of the course of his employment are or is alleged to be due may sue for and recover the wages or sum in the Court in the same manner as if he were of full age.

Ancillary equitable relief: injunctions.

46. (1) Without affecting the generality of Division 8, the Court shall, in any action, have power to grant any injunction (whether interlocutory or otherwise) which the Supreme Court might have granted if the action were proceedings in the Supreme Court.

(2) In relation to the power of the Court to grant an injunction under this section—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c) shall, subject to the rules, extend to the enforcement of any order of the Court made in connection with proceedings for the grant of the injunction.

(3) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of an injunction under this section; and

(b) any other matter necessary or convenient for giving effect to this section.

Cause of action or defendant outside the State.

47. (1) The Court shall have jurisdiction in accordance with this Act to hear and dispose of an action—

(a) notwithstanding that part of the cause of action arose outside New South Wales, provided a material part of the cause of action arose within New South Wales;

(b) notwithstanding that the whole cause of action arose outside New South Wales, provided the defendant was resident within New South Wales at the time of service of the statement of claim in the action; or

(c) notwithstanding that the defendant is not within New South Wales, provided the whole cause of action or a material part of the cause of action arose within New South Wales and provided the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended) at the time of service of the statement of claim in the action.

(2) Subsection (1) (c) applies whether the defendant has or has not ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, where there are two or more defendants, any one of those defendants.

Miscellaneous limitations on jurisdiction.

48. (1) An action in which the amount claimed does not exceed $20 and which could have been commenced in a court of petty sessions shall not be commenced in the Court except with the leave of the Court, which leave may be given on terms.

(2) Subject to subsection (3), the Court shall not have jurisdiction in an action in which title to land the value of which is more than $10,000 is in question.

(3) If the title to land the value of which is more than $10,000 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

of the Court shall not be evidence of title between the parties or their privies in other proceedings in the Court or in any proceedings in any other court.

(4) Without affecting Division 8, the Court shall not have jurisdiction in actions for possession of land by virtue of this Part.

Subdivision 2.—Splitting and dividing of causes of action and abandonment.

Actions not to be split or divided.

49. (1) Where a person splits or divides any cause of action against another person—

(a) so as to bring an action for part of the amount for which an action may be brought on that cause; or

(b) so as to plead a cross-claim for part of the amount for which an action may be brought on that cause,

and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action brought or cross-claim pleaded on that cause (whether brought or pleaded in the Court or brought, taken or pleaded in any other court).

(2) Where a person has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another person, whether or not the amount of that claim exceeds $10,000, that other person may, notwithstanding the provisions of subsection (1) but subject to any other provision of this Act, bring an action on, or plead by way of cross-claim in the Court, each of those securities as if each of them formed a distinct cause of action.

50. A plaintiff who has a cause of action for more than $10,000 may abandon the excess by stating the abandonment in the statement of claim by the lodging of which an action is commenced on that cause of action, and where the abandonment is so stated— Abandonment.

(a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his case, recover to an amount not exceeding $10,000;

(b) judgment in the action shall be in full discharge of all demands in respect of that cause of action; and

(c) entry of the judgment in the records of the Court shall be made accordingly.

Subdivision 3.—*Jurisdiction by consent.*

51. (1) In this section, "memorandum of consent", in relation to an action, means a document signed— Consent jurisdiction.

(a) where there is only one defendant in the action—by the defendant or his solicitor; or

(b) where there are two or more defendants in the action—by each defendant or his solicitor,

in which it is stated that the defendant, or each of the defendants, consents to the action being tried in the Court and is aware that, unless the memorandum is filed in accordance with subsection (2), the Court will not have jurisdiction to hear and dispose of the action.

(2) Where, but for this subsection, the Court would not have jurisdiction to hear and dispose of an action by reason only of the fact that the amount claimed exceeds $10,000, the Court shall have jurisdiction to hear and dispose

of

of that action if, together with the statement of claim by the lodging of which the action is commenced, the plaintiff files a memorandum of consent in respect of the action.

DIVISION 3.—*Actions: Procedure.*

Subdivision 1.—*General.*

Actions to be heard at proper place.

52. Except where otherwise expressly provided by or under this Act, an action and any proceedings ancillary to that action shall be heard and disposed of by the Court sitting at the proper place in relation to that action.

Subdivision 2.—*Commencement of actions.*

Manner of commencement of actions.

53. (1) An action shall be commenced by the lodging by the plaintiff with a registrar—

(a) except in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim; or

(b) in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim or a statement of liquidated claim,

for issue by the registrar.

(2) Proceedings ancillary to an action shall be commenced in the prescribed manner.

Place of commencement of action.

54. An action may be commenced at any proclaimed place.

55.

55. (1) In this section— Relevant places.

"defendant" includes, where there are two or more defendants, any one of those defendants;

"relevant place", in relation to an action, means each of the following places :—

(a) the place where the defendant is resident;

(b) the place where the defendant carries on his business; and

(c) the place where the cause of action arose,

but does not include any place outside New South Wales.

(2) Where the proclaimed place at which an action is commenced is not the nearest proclaimed place to a relevant place, the defendant may, if he files the notice of the grounds of his defence under section 56 within the time prescribed for the purposes of this subsection, file within that time an affidavit by the defendant or his solicitor or agent specifying all the relevant places and the nearest proclaimed place to each of them.

(3) Where the defendant files the notice of the grounds of his defence and an affidavit in accordance with subsection (2), the plaintiff may, within the time prescribed for the purposes of this subsection, file—

(a) a notice, signed by the plaintiff or his solicitor or agent, selecting as the venue of the action one of the proclaimed places specified in the defendant's affidavit; or

(b) an affidavit by the plaintiff or his solicitor or agent stating that a notice under paragraph (a) is not filed on the ground that—

(i) the proclaimed place at which the action was commenced is the nearest proclaimed place to a relevant place;

(ii) at least one of the places specified as relevant places in the affidavit under subsection (2) is not a relevant place;

(iii) not all of the relevant places were specified in the affidavit under subsection (2); or

(iv) the place specified in the affidavit under subsection (2) as being the nearest proclaimed place to a relevant place specified therein is not the nearest proclaimed place,

and if a notice under paragraph (a) or affidavit under paragraph (b) is not so filed, the plaintiff shall, at the expiration of that prescribed time, be deemed to have discontinued his action.

(4) The filing of a notice in accordance with subsection (3) shall have the same effect as if the Court had ordered a change of venue under section 40 to the proclaimed place selected in the notice.

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either order a change of venue under section 40 to such proclaimed place as the Court thinks proper (whether or not that place is a relevant place) or direct that there shall be no such change of venue.

Subdivision 3.—*Defences.*

Defences.

56. (1) A defendant in an action commenced by the lodging of an ordinary statement of claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor.

(2) A defendant in an action commenced by the lodging of a statement of liquidated claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor, and an affidavit verifying the grounds or verifying such facts as the Court may, in the special circumstances of the case, deem sufficient.

(3) The registrar shall, as soon as practicable after the filing of any notice of grounds of defence under this section, give or send by post a copy of the notice and any affidavit filed with it to the plaintiff or his solicitor.

(4) A defendant shall not at the trial of an action, except by consent of the plaintiff or by leave, given on terms, of the Court, set up any ground of defence not included in a notice of grounds of defence filed by him under this section.

(5) A defendant shall not, by reason of having filed a notice of the grounds of his defence to an action, be deemed to have waived any objection he may have on the ground of want of jurisdiction in the Court to try the action.

Subdivision 4.—*Order for judgment and judgment by default.*

Order for judgment.

57. (1) Where, in an action commenced by the lodging of an ordinary statement of claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (1); and

(b) judgment has not been given or entered up in the action,

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing an affidavit of service of the statement of claim on that defendant, have an order, to be called an order for judgment, made by the Court or the registrar against that defendant.

(2)

(2) Subject to subsection (4), where an order for judgment is made in an action against a defendant—

(a) that defendant shall be deemed to have admitted liability; and

(b) the action shall go to trial only as to the assessment of the amount to be recovered by the plaintiff.

(3) An order for judgment—

(a) may be set aside, on terms, by order of the Court at any time before judgment; and

(b) shall, without order, be set aside on the filing of a notice of grounds of defence under section 56 (1) in the action in which the order for judgment was made.

(4) Subsection (2) shall, on the setting aside of an order for judgment in accordance with subsection (3), cease to have any operation upon or in respect of the action in which the order for judgment was made.

(5) Where an order for judgment is set aside, the Court may, at the same time or subsequently, make such orders as it thinks fit as to the continuance of the action and as to the costs incurred by any party by the making or setting aside of the order for judgment or by any adjournment of the hearing of the action.

Default judgment.

58. (1) Where, in an action commenced by the lodging of a statement of liquidated claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (2); and

(b) judgment has not been entered up in the action,

the

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing—

(c) an affidavit of service of the statement of claim on that defendant; and

(d) a statement of—

(i) the amount then due to the plaintiff in respect of the cause of action for which the action was commenced; and

(ii) any payments made or credits accrued since the commencement of the action in reduction of the amount of the plaintiff's claim or costs,

verified by the oath of the plaintiff, or his solicitor or agent,

have default judgment entered up by the Court or the registrar against that defendant for the amount referred to in paragraph (d) (i) or the amount specified in the statement of claim (whichever is the lesser), and such amount (if any) as may, for the purposes of this subsection, be prescribed as costs.

(2) A default judgment under this section may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

Subdivision 5.—Judgment by confession or agreement.

59. In this Subdivision— Interpretation: Pt. III, Div. 3, Subdiv. 5.

"defendant", in relation to an action—

(a) in which there is only one defendant—means the defendant; or

(b) in which there are two or more defendants —means all or any of the defendants;

"plaintiff",

"plaintiff", in relation to an action—

(a) in which there is only one plaintiff—means the plaintiff; or

(b) in which there are two or more plaintiffs—means all the plaintiffs.

Judgment by confession.

60. (1) At any time before judgment in an action, the defendant may sign a statement confessing to the amount, or part of the amount, of the claim of the plaintiff and may specify in that statement by what instalments payable at what times the defendant is prepared to pay the amount so confessed to.

(2) Where a statement under subsection (1) is filed before judgment, the registrar shall as soon as practicable thereafter give or send by post to the plaintiff or his solicitor notice of the amount to which the defendant has confessed and of any terms of payment specified by the defendant in that statement.

(3) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has not in the action claimed damages in respect of any personal injuries, the registrar shall forthwith after giving or sending the notice under subsection (2)—

(a) enter up judgment for the plaintiff for that amount; and

(b) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(4)

(4) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has in the action claimed damages in respect of any personal injuries and the plaintiff within the prescribed time—

(a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

(ii) make application to the Supreme Court for an order under section 145 removing the action into the Supreme Court and give notice to the registrar that he has so applied; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(5) Where the confession is to part only of the amount of the claim of the plaintiff and the plaintiff within the prescribed time—

(a) does not file a notice refusing to accept in full satisfaction of his claim the amount so confessed to; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(6) An order made under subsection (3) (b), (4) (d) or (5) (d) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

(7) Where within the prescribed time the plaintiff does not—

(a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to; or

(b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of any personal injuries—make an application as referred to in subsection (4) (a) (i), or make an application and give notice, as referred to in subsection (4) (a) (ii),

but files a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall forthwith enter up judgment for the plaintiff for the amount to which the defendant has confessed and—

(c) the registrar shall be deemed to have made an order under section 88 (4) that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

(d) the plaintiff's notice of refusal shall be deemed to be a notice of objection under section 88 (5).

(8)

(8) Where the plaintiff makes application, on the ground that he did not receive in sufficient time any notice required to be forwarded to him by the registrar under subsection (2), for the setting aside of any judgment entered up by the registrar under subsection (4) (c) or (5) (c) or any order made by the registrar under subsection (3) (b), (4) (d) or (5) (d), the Court may, if it thinks fit, set aside, on terms, the judgment or order.

(9) Where, within the prescribed time referred to in subsection (4), the plaintiff makes an application as referred to in subsection (4) (a) (i) or makes an application and gives notice, as referred to in subsection (4) (a) (ii), and the application is refused—

(a) the provisions of subsections (4) and (7) shall apply as if the application had not been made; and

(b) where the time at which the registrar is, in accordance with the rules, notified of the refusal is later than that prescribed time, the provisions of subsection (4) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.

61. (1) At any time before judgment in an action— Judgment by agreement.

(a) where there are parties joined otherwise than as plaintiff or defendant—

(i) all the parties; or

(ii) the plaintiff and the defendant; or

(b) where there are no parties joined otherwise than as plaintiff or defendant—the plaintiff and the defendant,

may enter into an agreement as to the judgment to be entered in the action as between the parties to the agreement and as to the terms and conditions (if any) upon which the judgment is to be satisfied.

(2)

(2) Where an agreement under subsection (1) is filed before judgment, the registrar shall forthwith enter up judgment in accordance with that agreement.

(3) Where—

(a) the registrar enters up a judgment under subsection (2);

(b) a judgment debt arises by virtue of the judgment; and

(c) the agreement specifies by what instalments payable at what times the judgment debt or part thereof is to be paid,

the registrar shall forthwith order that the judgment debt or part be paid by such instalments payable at such times as are so specified.

(4) An order made under subsection (3) shall be deemed to be an order made under section 88 (4) pursuant to an agreement referred to in section 88 (1) (b).

(5) A judgment entered up under subsection (2) pursuant to an agreement under subsection (1) may be set aside, on terms, by the Court on sufficient cause being shown on the application of any party to the action who was not a party to that agreement.

Machinery as to statements of confession and agreements.

62. (1) A statement under section 60 (1) may, instead of being signed by the defendant, be signed by his solicitor or barrister on his behalf.

(2) An agreement under section 61 (1) may, instead of being entered into personally by a party to the action, be entered into by his solicitor or barrister on his behalf.

(3)

(3) A statement under section 60 (1) or an agreement under section 61 (1) shall have no force or effect for the purposes of this Subdivision unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) A judgment entered up—

(a) under section 60 pursuant to a statement under section 60 (1) shall, as between the plaintiff and the defendant signing the statement; or

(b) under section 61 pursuant to an agreement under section 61 (1) shall, as between the parties to the agreement,

be in full discharge of all demands in respect of the cause of action in respect of which the statement was signed or the agreement was entered into.

Subdivision 6.—Arbitration.

Arbitration.

63. (1) The Court at any time may, with the consent of all the parties to an action, order, on terms, that the action be referred to an arbitrator.

(2) An award made by an arbitrator in an action referred to arbitration under subsection (1) shall, as soon as practicable, be—

(a) communicated by the arbitrator to the registrar; and

(b) entered by the registrar as the judgment of the Court in the action.

(3) A judgment entered under subsection (2) (b) shall, subject to subsection (4), be as binding and effectual for all purposes as if given by the Court.

(4)

(4) The Court, on application made to it by any party within the prescribed time, may set aside an award referred to in subsection (2) and any judgment entered under subsection (2) (b) in consequence of the award, and may—

(a) refer the award back to the arbitrator who made it; or

(b) revoke the reference to the arbitrator who made the award and make such order as it thinks fit for the continuance of the action.

Subdivision 7.—Witnesses, evidence and ancillary matters.

Subpoenas.

64. (1) On request by a party to an action, the registrar for any proclaimed place (whether or not that place is the proper place in relation to the action) shall, subject to the rules, issue—

(a) a subpoena to give evidence, requiring a person specified therein to attend and give evidence at any hearing of the action or of proceedings ancillary to the action, as directed by the subpoena; or

(b) a subpoena for production, requiring a person specified therein to attend and produce, for the purpose of evidence, at any hearing of the action or of proceedings ancillary to the action any document or thing that is in his possession or control and specified in the subpoena, as directed by the subpoena.

(2) The rules may make provision for or with respect to authorising compliance with a subpoena for production issued in respect of a document or thing by the production of the document or thing to a registrar.

(3)

(3) A person—

(a) who is duly served with a subpoena issued under subsection (1);

(b) to whom at the time of service of the subpoena, or not later than a reasonable time before the day on which his attendance is required by the subpoena, tender is made of an amount in respect of the expenses of complying with the requirements of the subpoena, determined in accordance with the rules; and

(c) who, without reasonable excuse, fails to comply with the subpoena,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or produce the document or thing.

Evidence and production by persons present.

65. A person who is present at the hearing of an action or of proceedings ancillary to an action and who, having been required by the Court but not by a subpoena to do so, refuses without reasonable excuse—

(a) to give evidence; or

(b) to produce a document or thing then in his possession,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or to produce the document or thing.

Fines under section 64 or 65.

66. (1) A fine imposed under section 64 or 65 is payable to the registrar.

(2)

(2) Payment of a fine imposed under section 64 or 65 may, if the Court so orders, be enforced, subject to the rules, as if the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the registrar were a judgment creditor.

(3) The amount of any fine paid to or recovered by the registrar under this section shall be applied in such proportions as the Court thinks fit—

(a) towards compensating any party to the action who is injured by failure to comply with the requirements of the subpoena or the Court in respect of which the fine was imposed; and

(b) to the Consolidated Revenue Fund.

Bringing up a prisoner to give evidence.

67. (1) A Judge (whether or not sitting at a proclaimed place), on application made in the prescribed manner by a party to an action, may if he thinks fit issue an order under the seal of the Court for bringing up before the Court any person confined in any prison or place under any sentence, under commitment for trial, or for any other reason, to be examined as a witness in the action, and for returning him to confinement.

(2) The person having the custody of a person in respect of whom an order is made under subsection (1) shall not be bound to comply with the order unless tender is made to him of an amount sufficient to cover the reasonable expenses involved in complying with the order.

Matters ancillary to trial.

68. (1) The rules may make provision for or with respect to—

(a) empowering a party to an action to give another party a notice requiring that other party to do all or any of the following things:—

(i) to give discovery of documents;

(ii)

(ii) to produce documents for inspection;

(iii) to produce documents at the hearing of the action;

(iv) to attend for a medical examination; or

(v) to make admissions for the purposes of the action;

(b) the manner of compliance with such a requirement; and

(c) empowering the Court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) The Court may, subject to and in accordance with the rules, order, on terms, that—

(a) a natural person, or a corporation through any of its officers, attend for examination before the Court, or attend and produce documents, for the purpose of ascertaining or assisting in the ascertainment of the identity of, and the name and place of residence of, and other particulars relating to, a person against whom an action may be brought;

(b) a party give discovery of documents to any party;

(c) a party produce documents for inspection by any party;

(d) a party produce documents at the hearing of any action;

(e) a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any action;

(f) the evidence of a witness be allowed to be taken on an examination before the hearing of an action;

(g) a party attend for a medical examination; or

(h) a party give further particulars of any statement of claim lodged, grounds of defence filed, or cross-claim pleaded by him,

and may make such further order as may be prescribed in the event of any failure by a person to comply with its order.

Informal proof; admissions. No. 52, 1970, s. 82.

69. (1) The Court may at any stage of any action—

(a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, and with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and

(b) require any party to the action, not being a minor or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in case of refusal or neglect to make the admissions may, unless the Court is of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

(2) An admission made as required by the Court under subsection (1) (b)—

(a) shall be for the purpose of the action in which it is made and for no other purpose;

(b) shall be subject to all just exceptions; and

(c) may, with the leave of the Court, given on terms, be amended or withdrawn.

70.

Examination on oath. No. 52, 1970, s. 83.

70. Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person for the purposes of an action—

(a) the examination shall be taken on oath; and

(b) the oath shall be administered by the person taking the examination or by a Judge.

Subdivision 8.—*Trial and jury.*

Setting down for trial.

71. Subject to this Act and the rules, an action in which a notice of grounds of defence is filed under section 56 or in which an order for judgment is made under section 57, shall be set down for trial in accordance with the rules.

Action called on for trial.

72. (1) Subject to this Act, where an action that has been set down for trial is called on for trial—

(a) if the plaintiff and a defendant appear, the Court may proceed to hear and dispose of the action as against that defendant; or

(b) if the plaintiff does, but a defendant does not, appear, the Court may proceed to the trial of the action against that defendant on the part of the plaintiff only.

(2) Where the Court proceeds to the trial of the action on the part of the plaintiff only, as referred to in subsection (1) (b), its judgment—

(a) may, on sufficient cause being shown, be set aside by order of the Court on terms; and

(b) shall, if not set aside, be as final and conclusive between the parties to the action as if both parties had appeared.

Striking out of action.

73. (1) The Court may, if it thinks fit, strike out an action at any time on terms, and without affecting the generality of the foregoing provisions of this subsection, the Court may so strike out an action if—

(a) no party appears; or

(b) a defendant does, but the plaintiff does not, appear.

(2) Where an action is struck out under subsection (1), the Court may, on the application of any party, order that the action be restored on terms, and without affecting the generality of the foregoing provisions of this subsection, that action may be so restored upon such terms and conditions as to costs, the staying of the action until payment of costs, and the priority of the hearing of the action as the Court thinks fit.

Conduct of the trial.

74. Subject to any direction given by the Court under section 156 (2), the order of evidence and addresses and conduct of the trial in respect of any action shall be in accordance with the rules.

Nonsuit.

75. The Court, at the trial of an action, may, in the prescribed circumstances, order a nonsuit where satisfactory proof is not given entitling the plaintiff to the judgment of the Court.

76. Where in an action a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at— Verdict exceeding $10,000.

(a) an amount in excess of $10,000 but not in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the full amount of the verdict; or

(ii) the total amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be; or

(b) an amount in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the amount of $15,000; or

(ii) the amount of $15,000 reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

77. (1) In an action the Judge shall determine all questions of law. Questions of fact and law.

(2) In an action the Judge shall, subject to subsection (5), determine all questions of fact unless a jury has been summoned.

(3)

(3) Subject to sections 78 and 79, an action shall be tried without a jury unless the Court makes an order (which may be made on terms) to the contrary.

(4) The Court may order that any question of fact in an action be tried before any other question of fact in the action.

(5) In an action, where a jury has been summoned—

(a) the Court may order that all or any issues of fact be tried without the jury if—

(i) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury; or

(ii) all parties consent to the order; and

(b) issues of fact on a defence arising under section 63 (5) or 64 (1) (c) of the Workers' Compensation Act, 1926, shall be tried without the jury.

Where jury may be summoned.

78. (1) In any action (other than an action to which section 79 applies), where the amount claimed exceeds $100, any party may, within the prescribed time, by filing a requisition for trial with a jury and paying the fee prescribed by the regulations made under section 150 require that a jury be summoned to try the action, and a jury shall be so summoned.

(2) Where the Court makes an order under section 77 (3) or 79 (1), the plaintiff shall pay the fee prescribed by the regulations made under section 150 and shall not be entitled to take any further step in the action until the fee is paid.

(3) The fee paid under subsection (1) or (2) shall be treated as costs in the action, unless the Court otherwise orders.

79.

79. (1) In any action to which this section applies, the Court may, on the application of any party, and shall, on the application of all parties, make an order (which may be made on terms) that the action be tried with a jury. Running down cases. No. 52, 1970, s. 87.

(2) Subject to subsection (4), this section applies to any action in which—

(a) damages are claimed in respect of—

(i) the death of or bodily injury to any person and the claim is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street;

(ii) damage to property caused by or arising out of the use of a motor vehicle; or

(iii) any other matter in which the liability incurred is caused by or arises out of the use of a motor vehicle; or

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a).

(3) In subsection (2)—

"motor vehicle" means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

"public street" means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

(4)

(4) This section does not apply to an action for damages in respect of the death of or bodily injury to any person where the action is based upon an act, neglect or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff.

80. It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial of an action. Special verdict. No. 52, 1970, s. 90.

Subdivision 9.—Judgments and orders.

81. Subject to this or any other Act, a judgment in an action shall, unless set aside in accordance with this Act, be final and conclusive between the parties to the action. Judgment final.

82. (1) A judgment or order of the Court in an action may, on sufficient cause being shown, be set aside, on terms, by order of the Court, if the judgment was given or entered up, or the order was made, irregularly, illegally or against good faith. Setting aside of judgment or order.

(2) Subsection (1) does not apply to an irregularity arising by virtue of a failure to which section 159 applies.

(3) A judgment or order of the Court in an action may, on terms, be set aside by order of the Court if the parties to the action consent.

83.

83. (1) The judgment in an action for the detention of goods, if for the plaintiff, shall be for an amount comprising— Judgment in detinue.

(a) the value of the goods, as determined by the Court; and

(b) damages (if any) awarded for the detention of the goods.

(2) The rules may make provision for or with respect to the circumstances in which the judgment debt in an action for the detention of goods shall be deemed to be satisfied, to the extent of the value of the goods, by the delivery of the goods to the plaintiff.

DIVISION 4.—*Actions: Enforcement of Judgments.*

Subdivision 1.—*General.*

84. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: Pt. III, Div. 4.

"judgment" includes any order of the Court for the payment of an amount of money as costs or otherwise;

"judgment debt" includes—

(a) any amount ordered by the Court to be paid as costs or otherwise; and

(b) any amount payable under section 120 as costs without any order of the Court.

(2) A reference in this Division to the giving of a judgment includes a reference to the making by the Court of an order for the payment of an amount of money as costs or otherwise.

85.

Interest on judgment debt.

85. (1) Unless the Court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

(a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as the Court in any particular case fixes;

(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act, 1970; and

(c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Notwithstanding subsection (1) or (2), where—

(a) the amount of a judgment debt (excluding the amount of costs to be ascertained by taxation or otherwise) is paid in full within twenty-one days after the judgment debt becomes payable; or

(b) the amount of costs ascertained by taxation or otherwise is paid in full within twenty-one days after that amount is so ascertained,

interest shall, unless the Court otherwise orders in any particular case, not be payable on the amount so paid.

Setting off of judgments.

86. (1) Where the judgment debtor in respect of an action (in this section referred to as "the first action") recovers judgment in his favour in another action (in this section referred to as "the second action") against his

judgment

judgment creditor, the judgment debtor may apply to the Court sitting at the proper place for either of those actions for an order that the judgment against him be set off against the judgment in his favour.

(2) Where an order is made under subsection (1) and—

(a) the amount of the judgment debt in the first action is less than or equal to the amount of the judgment debt in the second action, the judgment in the first action shall be deemed to be satisfied, and the amount of the judgment debt in the second action shall be reduced by the amount of the judgment debt in the first action; or

(b) the amount of the judgment debt in the first action is more than the amount of the judgment debt in the second action, the amount of the judgment debt in the first action shall be reduced by the amount of the judgment debt in the second action, and the judgment in the second action shall be deemed to be satisfied.

Subdivision 2.—Payment of judgment debt.

Payment of judgment debt generally.

87. (1) The Court may, on the application of any party to an action or without any such application being made, when giving judgment in the action, order that the judgment debt (if any) be paid at such time, or by such instalments payable at such times, as it thinks fit.

(2) Subject to this Subdivision, every judgment debt shall be payable forthwith.

(3) Subject to subsection (4), the amount of every judgment debt arising from an action, whether payable in one sum or by instalments, shall be payable to the registrar.

(4)

(4) Notwithstanding subsection (3), any payment by or on behalf of a judgment debtor made on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, operate to reduce the judgment debt by the amount of the payment.

(5) Where the Court makes an order under subsection (1), the order shall, while it remains in force, operate as a stay of enforcement of the judgment.

(6) Where a judgment creditor files an affidavit for the purpose of requiring the issue of any document for or in connection with the enforcement of a judgment, the affidavit shall, in any action (whether in the Court or in any other court) by the judgment debtor against the registrar for the wrongful issue of the document, be conclusive evidence in favour of the registrar that at the time of the issue of the document—

(a) where an amount is stated in the affidavit as having been paid in reduction of the judgment debt—that amount and no other amount had been paid; or

(b) where there is a statement in the affidavit that no amount has been paid in reduction of the judgment debt—no amount had been paid,

by or on behalf of the judgment debtor in reduction of the judgment debt.

Order for instalments subsequently.

88. (1) Whether or not an order in respect of a judgment debt has been made under section 87 (1)—

(a) the judgment debtor may make an application in writing, supported by an affidavit as to his property and means, to the registrar for leave to pay the judgment debt, or the balance of the judgment debt

then

then owing to the judgment creditor, by such instalments payable at such times as may be specified in the application; or

(b) the judgment creditor and the judgment debtor may enter into an agreement specifying the amount agreed to be then owing to the judgment creditor, and may in that agreement specify by what instalments payable at what times that amount is to be paid.

(2) An agreement under subsection (1) (b) may, instead of being entered into personally by the judgment creditor or the judgment debtor, be entered into by his solicitor or barrister on his behalf.

(3) An agreement under subsection (1) (b) shall have no force or effect for the purposes of this section unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) Where—

(a) an application is made by a judgment debtor under subsection (1) (a), the registrar shall forthwith consider and determine the application and may—

(i) order that the judgment debt be paid by such instalments payable at such times as are specified in the application; or

(ii) refuse to make such an order; or

(b) an agreement under subsection (1) (b) is filed, the registrar shall forthwith order that the judgment debt be paid by such instalments payable at such times as are specified in the agreement,

and where he makes an order under paragraph (a) or (b) the registrar shall, as soon as practicable thereafter, give or send by post to the judgment creditor and judgment debtor notice of the order.

(5) Where an order is made by a registrar under subsection (4) pursuant to an application made by the judgment debtor under subsection (1) (a), the judgment creditor may, within the prescribed period after notice of the order was given or sent to him under subsection (4) by the registrar, file notice of his objection to the payment of the judgment debt by the instalments specified in the order.

(6) Where under subsection (4) the registrar refuses to make an order, or where the judgment creditor files with the registrar a notice of objection in accordance with subsection (5), the registrar shall set down the judgment debtor's application for hearing by the Court and shall as soon as practicable thereafter give or send by post to the judgment creditor and the judgment debtor notice of the time and place set down by him for the hearing of the judgment debtor's application, and the Court may, after hearing the judgment debtor and the judgment creditor, or such of them as appears, deal with the application and—

(a) where the registrar refused to make the order—

(i) make an order that the judgment debt, or the balance of the judgment debt then owing to the judgment creditor, be paid by such instalments payable at such times as the Court thinks fit; or

(ii) refuse to make such an order; or

(b) where the judgment creditor has filed such a notice of objection, confirm, vary or rescind the order of the registrar.

(7) Where—

(a) an application is made by a judgment debtor under subsection (1) and no application in respect of the judgment debt has previously been made under that subsection or under section 87 (1); and

(b)

(b) the registrar refuses under subsection (4) to make an order pursuant to the application,

the application shall, until it is dealt with under subsection (6), and unless the Court otherwise orders, operate as a stay of enforcement of the judgment in respect of which the application is made, except enforcement by way of a garnishee order to which section 98 applies made before the application was made to the registrar.

(8) Where the Court or the registrar makes an order under this section, the order shall, while it remains in force, operate as a stay of enforcement of the judgment in respect of which the order was made, except enforcement by way of a garnishee order to which section 98 applies made before the order under this section was made.

(9) An order may be made under this section in respect of a judgment debt, notwithstanding that at the time when the application for the order or the order is made there is in force an order under section 87 (1) or under this section, but where there is in force such an order any subsequent order made under this section in respect of the same judgment debt supersedes the former order.

Miscellaneous provisions as to orders under sections 87 and 88 and applications.

89. (1) Upon an application, supported by affidavit, made by the judgment creditor on the grounds that there has been a substantial increase in the property or means of the judgment debtor, the Court may, if satisfied as to the truth of those grounds, vary or rescind any order under section 87 or 88 in respect of the judgment debt and, where the Court refuses to grant the application, may order the judgment creditor to pay to the judgment debtor such amount as it thinks fit for the expenses of the judgment debtor in attending the Court to oppose the application.

(2) An order made under section 87 or 88 in respect of a judgment debt shall, subject to the agreement (if any) consequent on the filing of which the order was made under section 88 (4) (b), cease to be in force if the judgment debtor fails to make any payment in accordance with the order, and thereafter the judgment may, except where otherwise directed by the Court or provided in the agreement (if any), be enforced for the balance of the judgment debt owing to the judgment creditor.

Subdivision 3.—*Examination of judgment debtor.*

90. In this Subdivision— Interpretation: Pt. III, Div. 4, Subdiv. 3.

"examination summons" means summons issued under section 91 (1);

"issuing registrar", in relation to an examination summons, means the registrar for the proclaimed place at which the summons was issued;

"presiding registrar" means a registrar before whom a person is required to attend for examination under this Subdivision.

91. (1) Where a judgment debt arising from an action has not been satisfied, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons directed— Examination summons.

(a) where the judgment debtor is not a corporation—to the judgment debtor; or

(b) where the judgment debtor is a corporation—to an officer or former officer of the corporation.

(2)

(2) The examination summons—

(a) shall summon the person to whom it is directed to attend before the registrar for a proclaimed place that, in the opinion of the issuing registrar, is either—

(i) the nearest proclaimed place to the place where that person is resident, as stated by the judgment creditor to the issuing registrar in writing; or

(ii) the most easily accessible to that person,

and that is specified in the summons;

(b) shall summon that person so to attend on a day and at a time fixed by the issuing registrar and specified in the summons, and thereafter as required by the presiding registrar, to be orally examined by the judgment creditor before the presiding registrar; and

(c) may require that person to produce to the presiding registrar, at the examination referred to in paragraph (b), any document or thing in that person's possession or control which tends to show the judgment debtor's true financial circumstances.

(3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons, the judgment creditor may orally examine that person before the presiding registrar as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

(4) The examination summons shall not be directed to an officer or former officer of a corporation under subsection (1) (b) unless the Court or the issuing registrar is

satisfied

satisfied by affidavit or otherwise that the officer or former officer is likely—

(a) to have sufficient knowledge of the affairs of the corporation to enable him to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination under this Subdivision; or

(b) to have in his possession or control any document or thing which tends to show the true financial circumstances of the corporation.

(5) Where in respect of the judgment debt the person to whom the examination summons is directed has attended before a registrar for examination under this Subdivision in answer to or consequent upon the issue of an examination summons, another examination summons directed to that person shall not, unless the Court, on the application of the judgment creditor, otherwise orders, be issued in respect of the judgment debt within three months after that person's attendance.

(6) A registrar may be a presiding registrar as well as the issuing registrar in relation to the one examination summons.

Failure to attend in answer to examination summons.

92. (1) If at the time set down (whether originally or in an order under subsection (7) (b) (ii) or on an adjournment) for the examination of the person to whom an examination summons is directed he fails to attend before the presiding registrar, that registrar, unless he has information satisfying him that the judgment debt has been paid, shall, if the judgment creditor so requests and—

(a) upon due proof of service of the examination summons on the person to whom the summons is directed or, where the examination has been adjourned, that that person has been notified of the time and place fixed for the examination; and

(b)

(b) upon due proof of the tender to that person of the reasonable expenses of attending in answer to the summons, at the time of service of the summons or not later than a reasonable time before the day on which he was required by the summons to attend before the registrar,

report in writing to the Court that that person has so failed to attend.

(2) After the report is made to it, the Court may, if it thinks fit—

(a) authorise the presiding registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or

(b) adjourn the examination of that person and order that he attend before the presiding registrar on a date and at a time specified in the order,

and the presiding registrar shall forthwith give that person, or send to him by post at his address last known to the presiding registrar, a notice informing him of any action taken by the Court under this subsection.

(3) A warrant shall not be issued under this section until after the expiration of fourteen days after the Court authorised its issue.

(4) If during the period of fourteen days after the Court authorised the issue of a warrant in respect of a person he has not attended, by arrangement with the presiding registrar, to be examined as to the matters referred to in section 91 (3), the presiding registrar, on the application of the judgment creditor verified by his affidavit or in such other manner as may be prescribed, may, after the expiration of that period, issue his warrant for the apprehension of that person.

(5)

(5) The warrant shall—

(a) be under the hand of the presiding registrar;

(b) name or otherwise describe the person whose apprehension is required by the warrant;

(c) state shortly the reason for its issue;

(d) order the bailiff, required under section 27 (2) to execute it, to apprehend that person if he is within New South Wales and cause him to be brought before the registrar for the proclaimed place nearest to the place at which he is apprehended to be examined as to the matters referred to in section 91 (3); and

(e) continue in force until it—

(i) is executed;

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the bailiff in whose hands the warrant is for execution; or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of the warrant.

(7) Where the person in respect of whom the issue of a warrant is authorised under subsection (2) (a) attends before a registrar by arrangement, as referred to in subsection (4), or is brought before a registrar under the warrant, as referred to in subsection (5) (d), and—

(a) the judgment creditor attends before the registrar—the judgment creditor may orally examine that person before the registrar as to the matters referred to in section 91 (3); or

(b) the judgment creditor does not so attend—the registrar may—

(i) in accordance with the rules examine that person as to the matters referred to in section 91 (3) and report to the judgment creditor the results of the examination;

(ii) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a day and at a time specified in the order; or

(iii) strike out the examination.

(8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7) (b) (ii) in respect of the examination, or the examination is struck out, whichever first occurs.

Instalment order after examination.

93. (1) Where a person has attended for examination in accordance with this Subdivision before or by the issuing registrar in relation to a judgment debt, that registrar may make an order for the payment of the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order.

(2) An order made under subsection (1) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

Failure to give evidence, etc., at examination.

94. Where a person attends before or is brought before a registrar for examination in accordance with this Subdivision and that person—

(a) without reasonable excuse, refuses to give evidence on oath at the examination;

(b) gives false information at the examination; or

(c) without reasonable excuse, fails to produce any document or thing that he is required by an examination summons to produce thereat,

the Court may, if that registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

Adjournment of examination.

95. A registrar may from time to time adjourn any examination being or to be conducted before or by him under this Subdivision.

Court may exercise registrar's powers under this Subdivision.

96. The Court may exercise or perform any of a registrar's powers, authorities, duties or functions under this Subdivision.

Subdivision 4.—*Attachment of debts.*

Garnishee orders.

97. (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a "garnishee").

(2)

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

(a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee all debts which were due, owing or accruing from him to the judgment debtor at the time when the garnishee order was made and which are so due, owing or accruing at the time of service of the garnishee order;

(b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee; and

(c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).

(3) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached by operation of the order or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

98. (1) In this section, "instalment order" means an order made under section 88. Continuous operation of certain garnishee orders.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.

(5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

99. (1) In this section— Limitation on operation of garnishee orders attaching a wage or salary.

"prescribed rate", in relation to a wage or salary, means—

(a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage; or

(b)

(b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

"Sydney basic wage" means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

"wage or salary" includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or

(b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

Payment under certain garnishee orders.

100. (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(2) Where a garnishee makes a deduction in accordance with subsection (1), he shall forward to the judgment creditor, when making payment to the registrar or to

or

(2) Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.

Judgment creditor to account for any excess paid by a garnishee.

106. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : $200.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5.—Writ of execution.

Issue of writ of execution.

107. (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, issue a writ of execution to enforce the judgment in the action.

(2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment—

(a) if a period of twelve years has elapsed since the judgment was given or entered up;

(b)

(b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description;

(d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force; or

(e) in the prescribed circumstances.

Priority and duration of writs of execution.

108. (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by him on the writ, and the bailiff for a proclaimed place who is required, under section 27 (2), to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

Seizing and taking under writ of execution.

109. (1) The bailiff for a proclaimed place who is required, under section 27 (2), to execute a writ of execution may seize and take under the writ and may cause to be sold—

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be

possessed

possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except—

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate $500 in value,

being used as such by the judgment debtor or any member of his family; and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff shall, before he causes any property to be sold under a writ of execution, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his judgment, those prices are most likely to be obtained.

(3) Where it appears to the bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, he shall first cause to be sold so much of the property as appears to him to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to him to be sufficient to satisfy the balance due under the execution.

(4) The bailiff shall cause property to be sold under subsection (3)—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense;

(b)

(b) subject to paragraph (a), in such order as the judgment debtor may direct; and

(c) subject to paragraphs (a) and (b), in such order as seems to the bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the bailiff to the judgment creditor.

(6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(7) Where a bailiff may cause property to be sold under a writ of execution, the property may be sold by that bailiff or by another bailiff or, in the case of land, by an auctioneer, as referred to in section 111.

(8) Where any property is to be put up for sale under a writ of execution, the bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.

(9) A bailiff may serve—

(a) on a judgment debtor against whom a writ of execution has been issued; or

(b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the personal property of the judgment debtor in his custody as has been seized under the writ of execution.

(10) A person (whether or not he is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Penalty : $500.

(11) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

110. (1) Subject to section 105 of the Real Property Act, 1900, and section 188 of the Conveyancing Act, 1919, a writ of execution, when delivered to the bailiff required under section 27 (2) to execute it, binds land in like manner as a writ of execution against property binds goods and chattels. **Special provisions as to execution against land.**

(2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless—

(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or

(b) the bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(3) A bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the bailiff with the prescribed procedures, but a

purchaser

purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.

(4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.

(5) Where land that is not under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the registrar for that place shall execute a proper assurance thereof in favour of the purchaser.

(6) Where land that is under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the duty imposed on a registrar by section 105 (2) of that Act shall not be performed except by the registrar for that place.

111. The rules may make provision for or with respect to— **Auctioneers.**

(a) the appointment of an auctioneer licensed under the Auctioneers and Agents Act, 1941, to sell any land under a writ of execution; and

(b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the bailiff in connection with the sale of the land.

112.

or at the direction of the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;

(b) the amount deducted by the garnishee for his own use under subsection (1); and

(c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of section 105 (2) be deemed to have been paid by the garnishee.

101. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under an Act other than this Act, that has a like operation. **Limitation of payment under certain concurrent garnishee orders.**

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of

the

the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

(a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary; or

(b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary

Procedure where garnishee order not complied with.

102. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as "the garnishee summons") requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.

(2) The garnishee summons—

(a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either—

(i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing; or

(ii) the most easily accessible to the garnishee,

and that is specified in the garnishee summons; and

112. (1) In this section— Sale or mortgage by judgment debtor of land affected by writ.

"issuing registrar", in relation to a writ of execution, means the registrar for the proclaimed place at which the writ of execution was issued;

"notice of consent" means the notice referred to in subsection (2) (a).

(2) Where land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act, 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act, 1919, and—

(a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor;

(b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage;

(c) the notice of consent is filed with the issuing registrar; and

(d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) Where during that prescribed period—

(a) the judgment debtor sells or mortgages the land;

(b) in the case of a sale—the amount of the deposit (if any) is paid to the issuing registrar, to be held by him as stakeholder; and

(c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than—

(i) the minimum amount referred to in subsection (2) (b); or

(ii) if the judgment creditor notifies the issuing registrar in writing that he consents to payment of a specified amount that is less than that minimum amount—that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar shall, upon production to him of the instrument evidencing the sale or mortgage, and if he is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his consent to the sale or mortgage.

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent shall not, in relation to the land, be affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), shall, subject to and in accordance with the rules—

(a) be paid to or at the direction of the judgment creditor; and

(b) be in reduction of the judgment debt.

Subdivision

Subdivision 6.—Writ against the person.

Writ against the person.

113. (1) Where the Court is satisfied on the application of a judgment creditor that—

(a) the judgment debt arising from an action has not been satisfied; and

(b) the judgment debtor is about to leave the Commonwealth, or to remove any property from the Commonwealth, with intent to evade payment of the judgment debt,

the Court may, if it thinks fit, authorise the registrar to issue a writ against the person of the judgment debtor to enforce payment of the judgment debt and the registrar shall, on being so authorised, issue the writ.

(2) A writ against the person of a judgment debtor shall—

(a) be under the hand of the registrar by whom it is issued;

(b) name or otherwise describe the judgment debtor whose arrest and imprisonment is required by the writ;

(c) order the bailiff, required under section 27 (2) to execute it, to arrest the judgment debtor if he is within New South Wales and to deliver him to the governor of the prison to whom it is directed;

(d) order the governor of the prison to whom it is directed to keep him in custody until discharged in accordance with law; and

(e)

(e) continue in force until the judgment debtor is so discharged or, if the judgment debtor is not arrested, until it expires in accordance with the rules,

and may lawfully be executed on a Sunday.

(3) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of a writ against the person.

(4) The arrest or imprisonment of a judgment debtor under a writ against the person shall not operate as a satisfaction of the judgment debt or any part thereof, but the issue of the writ shall, except as provided in this Subdivision, operate as a stay of enforcement of the judgment until the writ ceases to be in force.

(5) In this section, "the Commonwealth" includes any part of the Commonwealth within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended.

Discharge of judgment debtor.

114. (1) A judgment debtor arrested or imprisoned under a writ against the person shall be discharged from custody under the writ on payment of the amount specified in the writ as being due under the judgment and the costs of executing the writ, and any bailiff, and the governor of any prison, in whose custody the judgment debtor is under the writ, are hereby empowered and required to receive that amount and those costs if tendered, and to transmit them to the registrar for the proclaimed place at which the writ was issued.

(2) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the registrar for the proclaimed place at which the writ was issued a request in writing for the discharge of the judgment debtor from custody, the registrar shall, as soon as practicable after receipt of the request, issue a notice requesting the discharge of the judgment debtor and send or deliver the notice to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ, and the bailiff or governor of the prison shall on receipt of the notice forthwith discharge the judgment debtor from custody under the writ.

(3) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ a request in writing for the discharge of the judgment debtor, the bailiff or governor of the prison shall on receipt of the request forthwith discharge the judgment debtor from custody under the writ.

(4) Where a judgment debtor makes application to the governor of the prison in whose custody he is under a writ against the person for his discharge from that custody, the governor shall as soon as practicable cause the judgment debtor to be brought before the Court at the most convenient proclaimed place for the purpose of making his application to the Court, and on hearing any such application the Court may, if it thinks fit, order, on terms, that the judgment debtor be discharged from custody under the writ.

(5) Where a judgment debtor is discharged by virtue of subsection (2), (3) or (4) from the custody in which he is held under a writ against the person, the discharge from custody shall not operate as a satisfaction of the judgment debt or any part thereof.

DIVISION 5.—*Actions: Interpleader.*

Interpleader by defendant or bailiff.

115. (1) An application may be made for relief by way of interpleader—

(a) by a defendant in an action for or in respect of any debt, money, goods or chattels to which some third party makes a claim; or

(b) by a bailiff if a claim is made to any money, goods or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

(2) An application under subsection (1)—

(a) by a defendant in an action shall be made to the registrar for the proper place in relation to the action; or

(b) by a bailiff, required under section 27 (2) to execute a writ of execution, shall be made to the registrar for the proclaimed place for which he is bailiff.

(3) Where the application is made by the defendant, it shall be supported by an affidavit showing—

(a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;

(b) that the applicant does not collude with the person making a claim as referred to in subsection (1) (a); and

(c) that the applicant is willing to pay or transfer the subject-matter in dispute into court or, if the registrar so requires, to give security to the value of the subject-matter to the satisfaction of the registrar.

Claim to property taken or intended to be taken in execution.

116. (1) Where—

(a) a person, other than the person against whom a writ of execution is issued, makes to the bailiff a claim to any money, goods or chattels (in this section referred to as "the property") taken or intended to be taken in execution under the writ;

(b) the judgment creditor has not, in accordance with the rules, directed the bailiff to withdraw from possession of the property, or not to seize the property, as the case may require; and

(c) the property has not been sold under the writ,

then—

(d) where, whether or not a notice referred to in paragraph (e) is given to the claimant and whether or not the period specified in the notice has expired, the claimant pays to the bailiff an amount equal to the value of the property or gives the bailiff security to that value—the property shall thereupon be released from execution under the writ and the bailiff shall make an application for relief by way of interpleader under section 115 in respect of the amount so paid or the security so given; or

(e) where the claimant neither pays that amount nor gives that security before the expiration of a reasonable period specified in a notice given by the bailiff to the claimant for the purposes of this subsection —the bailiff—

(i) may make an application for relief by way of interpleader under section 115 in respect of the property; or

(ii) may, subject to paragraph (d), sell the property as if the claim had not been made, and shall make an application under section 115 for relief by way of interpleader in respect of the proceeds of the sale as if the claim had been made to those proceeds.

(2) The rules may require that a claim referred to in subsection (1) be verified by affidavit of the claimant.

(3) The amount of the value and the nature of the security referred to in subsection (1) shall be as may be agreed upon between the claimant and the bailiff, or where they have not agreed be as determined by some competent person appointed by the registrar, and the costs of the determination shall in the first instance be payable by the claimant.

(4) Any amount paid to the bailiff as referred to in subsection (1) (d), and the proceeds of any sale under subsection (1) (e) (ii), shall as soon as practicable thereafter be paid by the bailiff to the registrar to whom the bailiff's application for relief by way of interpleader is made, and shall be paid out by the registrar in accordance with the order of the Court.

Where application for relief made.

117. (1) Upon an application being made to a registrar under section 115, the registrar shall issue a summons calling upon the claimant to state the nature and particulars of his claim in such form and within such time as may be prescribed.

(2) Upon the issue of the summons and, where the application for relief is made by the defendant, upon the payment of the amount of the claim, or the transfer of the property the subject of the claim, into court, or, if the registrar so requires, upon the defendant giving security to the value of that property, all proceedings in the action and in any other action which may have been brought in the Court, the Supreme Court or any court of petty sessions in respect of the claim shall be stayed.

(3) If the claimant complies with the summons, the registrar shall record the commencement of an interpleader action and issue notice of that action to the claimant and to

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the execution creditor or the plaintiff in the original action, and the Court shall adjudicate upon the claim, and—

(a) make such order between the parties in respect thereof, of the costs of the proceedings and of the continuance of the actions in which proceedings have been stayed; and

(b) where any amount has been paid, or security has been given, to a bailiff in respect of property the subject of the claim, or the property has been sold under section 116 (1) (e) (ii), make such order with respect to the payment of the amount, or the enforcement or discharge of the security, or the proceeds of sale of the property,

as may to it seem fit.

(4) An order made under subsection (3) may be enforced in the same manner as a judgment in an action.

(5) If the claimant fails to comply with the summons—

(a) the stay of proceedings shall be removed;

(b) any money paid, or any property the subject-matter of an action transferred, by a defendant into court under subsection (2) shall be paid or transferred by the registrar to the plaintiff; and

(c) the claimant shall be forever barred from prosecuting any claim in respect of the subject-matter of the action, or the property the subject of the claim made to the bailiff, as the case may be,

unless the Court otherwise orders upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed, and where any money has been paid into court by the bailiff or any security has been given to the bailiff or registrar in respect of the property the subject of

the

the claim or the subject-matter of the action the Court may make such order with respect to the payment of that money or the enforcement or discharge of that security as it thinks fit.

(6) The rules may make provision for or with respect to the practice and procedure of the Court in relation to interpleader actions.

118. Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other. Adverse titles.

DIVISION 6.—*Actions: Costs.*

119. In this Division, "costs" means costs payable between party and party, and includes disbursements. Interpretation: Pt. III, Div. 6.

120. Subject to section 124, the costs of any action, including the costs of any proceedings ancillary to the action, shall be paid by or apportioned between the parties in such manner as the Court in its discretion orders and, in default of any such order, shall, except where otherwise provided by the rules, follow the event of the action. Costs in discretion of Court or follow event.

121. Where— Agreement as to costs.

(a) a party's costs, or any part thereof, in an action are required to be paid by another party;

(b)

(b) the parties agree upon the amount of those costs; and

(c) the agreement is evidenced to the registrar in the prescribed manner,

the amount of those costs shall be as so agreed upon.

Taxation of costs.

122. (1) Where—

(a) a party's costs in an action are required to be paid by another party; and

(b) an agreement as to the amount of those costs is not entered into and evidenced as required by section 121,

the amount of those costs shall be as determined—

(c) except as provided by paragraph (d), by taxation, in accordance with the rules, by the registrar for the proper place in relation to the action; or

(d) if the action is within a prescribed class of actions and if the Court so orders on the application of any party or without any such application—by taxation, in accordance with the rules, by the registrar for Sydney.

(2) On a taxation of costs—

(a) no item shall be allowed that is not authorised by the rules; and

(b) where an item is allowed, the amount to be allowed for the item shall, subject to subsection (3), be the amount specified in the rules in relation to items of the class to which that item belongs.

(3)

(3) The rules may require that costs payable in any action be reduced by reference to the amount recovered in the action or otherwise.

(4) A taxation of costs may be reviewed by the Court in accordance with the rules.

Costs form part of judgment debt.

123. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

Limitations on costs.

124. (1) If in any action which could have been brought in a court of petty sessions but which is brought in the Court—

(a) the plaintiff recovers a total amount which does not exceed $100 by payment by or on behalf of the defendant without judgment; or

(b) judgment is given or entered up in favour of the plaintiff for an amount which does not exceed $100,

the plaintiff shall not be entitled to recover any costs in the action unless the Court certifies that it appears to it that there was a sufficient reason for bringing or trying the action in the Court.

(2) Subsection (1) does not apply in respect of an action in which judgment is given or entered up for an amount which does not exceed $100 but which would have exceeded $100 but for—

(a) any verdict against the plaintiff on any cross-claim pleaded by the defendant; or

(b) any reduction of the damages due to the plaintiff under Part III of the Law Reform (Miscellaneous Provisions) Act, 1965,

or but for both such a verdict and such a reduction.

(3)

(3) No fees to barristers or solicitors shall be allowed in any action for the recovery of a debt or liquidated demand if—

(a) the amount sued for does not exceed $250; and

(b) the defendant does not file notice of the grounds of his defence under section 56.

DIVISION 7.—*Actions: New Trial and Appeal.*

125. In this Division, "action" includes interpleader action. Interpretation: Pt. III, Div. 7.

126. (1) The Court in its discretion may, after judgment in an action, order that a new trial of the action be had if— Order of the Court for new trial.

(a) the parties to the action consent; or

(b) the action is tried with a jury and on the day on which the jury gives its verdict in the action a party to the action—

(i) in the presence of the other party; or

(ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party,

makes application for the order.

(2) The Court may, before judgment in an action and if no verdict in the action has been entered, order, on sufficient cause being shown, that the hearing of the action be discontinued and that a new trial be had.

127. (1) Subject to section 130, where, after judgment in an action, an order has not been made under section 126 (1) in respect of the action, an application for a new trial in respect of the action may be made to the Supreme Court. Application to Supreme Court for new trial.

(2)

(2) On an application under this section in respect of an action, the Supreme Court may order a new trial of the action or of any issue therein or may refuse to make such an order.

(3) An application under this section shall be deemed to be an appeal to which sections 106 and 107 of the Supreme Court Act, 1970, apply.

(4) Without affecting the generality of subsection (2), the Supreme Court may order a new trial under this section on the ground that a verdict, finding or assessment of the Judge, whether sitting with or without a jury, is against the evidence and the weight of evidence.

(5) An application under this section shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Appeal to Supreme Court.

128. (1) Except in the case of an action of the nature mentioned in subsection (2), an appeal shall, subject to sections 129 and 130, lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, in an action.

(2) In the case of an action in which the relief sought or granted includes an injunction under section 46, an appeal shall lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, or upon the determination of any question of fact, in the action.

(3) In an appeal under subsection (1) or (2), the Supreme Court—

(a) if it is of the opinion that a nonsuit should have been ordered at the trial—may order a nonsuit;

(b)

(b) if it is of the opinion that upon the evidence any party is as a matter of law entitled to a verdict in the action or upon any issue therein—may give that verdict and may order that such judgment be entered as is appropriate to that verdict; or

(c) may order that a new trial of the action or of any issue therein be had,

or may refuse to make such an order or give such a verdict.

(4) In an appeal under subsection (2), the Supreme Court may grant, refuse, vary or rescind any injunction relative to the action.

(5) Where no injunction under section 46 is granted in an action in which the relief sought includes such an injunction, the Supreme Court may, if it thinks fit, refuse to entertain an appeal under subsection (2) in relation to the action if it is of the opinion that the injunction was sought only for the purpose of securing the right to appeal under subsection (2).

(6) An appeal under subsection (1) or (2) shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Agreement not to appeal.

129. An appeal shall not lie under section 128 (1) from any ruling, order, direction or decision of the Court if before the ruling, order, direction or decision is pronounced the parties agree in writing, signed by themselves or their solicitors, that the ruling, order, direction or decision shall be final.

130.

Whether application or appeal to Supreme Court is as of right.

130. (1) An application under section 127 may be made or an appeal under section 128 (1) lies—

(a) where the application or appeal involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of $1,000 or upwards—as of right; or

(b) in any case—by leave of the Supreme Court.

(2) An appeal under section 128 (2) lies as of right.

Stay of proceedings on an application or appeal to Supreme Court.

131. (1) Where—

(a) after judgment in an action the Court orders that proceedings be stayed during the period within which an application under section 127 may be made or an appeal under section 128 may be brought; and

(b) during that period—

(i) such an application is made or such an appeal is brought in respect of those proceedings; and

(ii) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the applicant or appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,

the

(b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.

(3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question of the amount of the debt, wage or salary (if any) attached by the garnishee order, and may give judgment for that amount, or for the unpaid balance of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for him to attend.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

103. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied. Bank accounts. S.C.R. Pt. 46, rr. 2, 5 (2).

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

(a) a condition that notice is required before money is withdrawn;

(b)

(b) a condition that a personal application must be made before money is withdrawn;

(c) a condition that a deposit book must be produced before money is withdrawn; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Lien or claim of third person on debt. S.C.R. Pt. 46, r. 10.

104. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

Payment by garnishee.

105. (1) A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to or at the direction of the judgment creditor.

(2)

the stay of proceedings shall continue until the application or appeal is disposed of or until the Court or the Supreme Court otherwise orders.

(2) Except as provided in this section or as directed by the Supreme Court, an application or appeal referred to in subsection (1) shall not operate as a stay of proceedings.

(3) This section does not affect the operation of section 156 (3).

DIVISION 8.—*Miscellaneous Jurisdiction.*

Subdivision 1.—*General.*

132. Subject to this Act and the rules, nothing in Divisions 2 to 7 (inclusive) applies to or in respect of any proceedings under this Division. Non-application of Divs. 2-7.

Subdivision 2.—*Possession of land and equity proceedings.*

133. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for possession of land the value of which does not exceed $10,000, as determined by the Court. Jurisdiction in proceedings for possession of land.

(2) Nothing in subsection (1) applies in respect of proceedings under the Landlord and Tenant Act, 1899.

134. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for— Jurisdiction in equity proceedings.

(a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien where the amount owing in respect of the mortgage, charge or lien does not exceed $5,000, as determined by the Court;

(b) the specific performance, rectification, delivery up or cancellation of any agreement for—

(i) the sale or purchase of any property at a price not exceeding $5,000; or

(ii) the lease of any property the value of which does not exceed $5,000, as determined by the Court;

(c) an order under section 3 of the Testator's Family Maintenance and Guardianship of Infants Act, 1916;

(d) relief against fraud or mistake where the damage sustained or the estate or fund in respect of which relief is sought does not exceed $5,000 in amount or value, as determined by the Court;

(e) the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed $5,000 in amount or value, as determined by the Court; or

(f) the administration of the estate of a deceased person, where the estate does not exceed $5,000 in amount or value, as determined by the Court.

(2)

(2) In any proceedings pursuant to subsection (1) (c), the Court shall not have power to make an order for provision under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, that will or may result in the amount of provision so made exceeding $5,000.

Commencement of proceedings.

135. (1) Proceedings in the Court for possession of land shall be commenced at the nearest proclaimed place to the place in New South Wales where the land or any part of the land is situated.

(2) Proceedings in the Court under section 134 shall be commenced at the nearest proclaimed place to the place in New South Wales—

(a) in the case of proceedings pursuant to section 134 (1) (a) or (b)—

(i) where the mortgage, charge or lien is of or over land or the agreement is in respect of the sale, purchase or lease of land—where a defendant is resident or carries on business or where the land or any part of the land is situated; or

(ii) in any other case—where a defendant is resident or carries on his business;

(b) in the case of proceedings pursuant to section 134 (1) (c) or (f)—

(i) where the deceased person last resided; or

(ii) where an executor or administrator is resident or carries on his business; or

(c) in the case of proceedings pursuant to section 134 (1) (d) or (e)—where a defendant is resident or carries on his business.

Proceedings commenced at wrong proclaimed place.

136. Where proceedings under this Subdivision, not being proceedings transferred to the Court under section 143 (2), are commenced at a proclaimed place that is not a place at which they ought, under section 135, to have been commenced, the Court may, on the application of a party to the proceedings or without any such application—

(a) order that the proceedings be continued in the Court notwithstanding that they were commenced at that place;

(b) order a change of venue of the proceedings, under section 40, to such other proclaimed place as the Court thinks proper; or

(c) strike out the proceedings.

Powers of the Court under this Subdivision.

137. In relation to proceedings under this Subdivision—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of any judgment or order of the Court in those proceedings.

Rules.

138. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings;

(b) the costs of any such proceedings; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

Appeal.

139. Division 7 applies to and in respect of proceedings under this Subdivision in the same way as if they were an action.

Subdivision 3.—*Temporary injunctions.*

Temporary injunctions.

140. (1) The Court shall have jurisdiction to grant an injunction, to be called a temporary injunction, to restrain—

(a) a threatened or apprehended trespass or nuisance; or

(b)

(b) the breach of a negative stipulation in a contract the consideration for which does not exceed $5,000,

in like manner, subject to this Subdivision, as the Supreme Court might grant an interlocutory injunction in like circumstances.

(2) Subject to this Subdivision, a temporary injunction shall continue in force for a specified period not exceeding fourteen days, but if the specified period is less than fourteen days, it may be renewed from time to time, but so that the total period for which the temporary injunction is in force does not exceed fourteen days.

(3) A temporary injunction may be renewed so that the total period for which it is in force exceeds fourteen days if the Court is satisfied that the additional time is required to enable proceedings to be commenced or heard in the Supreme Court in relation to the matter.

(4) A temporary injunction shall cease to be in force if—

(a) the Court, on the application of a party, so orders; or

(b) the Supreme Court, on the application of a party, so orders, whether or not the Supreme Court grants an injunction or gives any other relief in relation to the matter.

(5) Proceedings for a temporary injunction may be commenced at any proclaimed place, not being a prescribed proclaimed place.

(6) A temporary injunction may be renewed by the Court only where it is sitting at a proclaimed place that is not a prescribed proclaimed place.

(7) A reference in this section to the renewal of a temporary injunction includes a reference to the grant of another temporary injunction in respect of the same matter by the Court, whether before or after the expiry of the first-mentioned injunction.

Powers of Court under this Subdivision.

141. With respect to temporary injunctions—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof with respect to the granting of interlocutory injunctions;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge with respect to interlocutory injunctions; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable with respect to the granting of interlocutory injunctions; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of a temporary injunction and any order of the Court made in connection with proceedings for the granting of the temporary injunction.

142.

Rules.

142. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of temporary injunctions;

(b) the costs of proceedings in the Court in relation to temporary injunctions; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court.*

Subdivision 1.—*Transfer of proceedings from Supreme Court.*

Transfer of proceedings from Supreme Court.

143. (1) Where any proceedings that are pending in the Supreme Court could have been commenced as an action in the Court, and pleadings in the Supreme Court have closed, and the claim in the proceedings—

(a) does not exceed $3,000; or

(b) though it originally exceeded $3,000, is reduced by payment, an admitted set-off or otherwise to an amount not exceeding $3,000,

and the whole or part of the demand of the plaintiff is contested, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(2) Where any proceedings that are pending in the Supreme Court could have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

144. (1) Where the Supreme Court makes an order under section 143 (1) for the transfer of any proceedings to the Court sitting at a proclaimed place— Procedure on transfer.

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings in the proceedings with the registrar for that place and, if the plaintiff does not lodge those copies within ten days after the entry of the order, the defendant may lodge them with the registrar;

(b) when the copies have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become an action in the Court to try the issues raised by the pleadings and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with Division 6; and

(ii) as regards costs of the order, copies of the order and pleadings, and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

(2) Where the Supreme Court makes an order under section 143 (2) for the transfer of any proceedings to the Court sitting at a proclaimed place—

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings (if any) in the proceedings with the registrar for that place and, if the plaintiff does not lodge that copy or those copies, as the case may be, within ten days after the entry of the order, the defendant may lodge it or them with the registrar;

(b) when the copy or copies, as the case may be, has or have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become proceedings in the Court and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with the rules made in pursuance of section 138 (b); and

(ii) as regards costs of the order, copies of the order and pleadings (if any), and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

Subdivision

Subdivision 2.—Transfer of proceedings to Supreme Court.

Transfer of proceedings to Supreme Court.

145. Proceedings may, upon the application of a party, be removed into the Supreme Court by order of the Supreme Court upon such terms as to payment of costs, giving security for the amount claimed or costs, or otherwise, as the Supreme Court thinks fit.

Stay of proceedings on application for order.

146. (1) Where an application is pending in the Supreme Court for an order of removal or prohibition relating to any proceedings, the Supreme Court may make orders for a stay of the proceedings until the determination of the application or until the Supreme Court otherwise orders.

(2) An order for a stay of proceedings made under subsection (1) shall take effect immediately a copy of the order is served by the party who obtained the order upon the registrar for the proper place in relation to the action.

Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court.

147. (1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value—

(a) in the case of proceedings under section 133—$10,000; or

(b) in the case of proceedings under section 134—$5,000,

the validity of any order already made in the proceedings shall not be affected by that decision, and—

(c) the Court shall order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (d), the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and

(d)

(d) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (c) had not been made and as if the subject-matter did not exceed in amount or value the amount mentioned in paragraph (a) or (b), as the case may require.

(2) Subject to subsection (1), the Court may, during the progress of any proceedings under Subdivision 2 of Division 8, for any reason that appears to it to be sufficient, order that the proceedings be transferred to the Supreme Court, and—

(a) the validity of any order already made in the proceedings shall not be affected by the order for transfer; and

(b) the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court.

Removal of proceedings otherwise.

148. Proceedings shall not, except as provided by this Act, be removed out of the Court by appeal, motion, order or otherwise.

DIVISION 10.—*Miscellaneous Provisions.*

Costs where no jurisdiction.

149. Where any proceedings purport to be commenced in the Court and the Court has no jurisdiction to hear and dispose of the proceedings, the Court may, notwithstanding the lack of jurisdiction, make such order (if any) as it thinks fit for the payment by any party to any other party of the costs of the proceedings in the Court, and any such order for costs may be enforced as if the Court had had jurisdiction to hear and dispose of the proceedings.

150.

Regulations: Court fees.

150. (1) The Governor may make regulations for or with respect to fees to be paid in respect of the business of the Court.

(2) Different regulations may be made under this section to apply in different circumstances.

Fees form part of Consolidated Revenue Fund.

151. All fees received by a registrar under this Act shall be paid by him to the Treasurer for payment to the Consolidated Revenue Fund.

Unclaimed money.

152. (1) An amount which—

(a) was paid to a registrar for or on account of or for the use or benefit of any party to any proceedings; and

(b) remains unclaimed in the hands of the registrar for one year after a party to the proceedings becomes entitled to claim the amount,

shall be paid by the registrar to the Treasurer and placed to the credit of the Special Deposits Account in the Treasury.

(2) Section 30 of the Audit Act, 1902, does not apply to any amount referred to in subsection (1) of this section, but section 31 of that Act applies to any amount placed to the credit of the Special Deposits Account under subsection (1) of this section as if the amount had been so placed under section 30 of that Act.

Proceedings for offences.

153. (1) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

(2) Nothing in subsection (1) applies in respect of the imposition of a fine under section 64 or 65.

Offences by corporations.

154. Where a person convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence was an officer of the corporation shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, if he knowingly and wilfully authorised or permitted the commission of the offence.

Civil remedy not affected by proceedings for an offence.

155. Notwithstanding any proceedings against a person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

Miscellaneous powers of Court in respect of proceedings, etc.

156. (1) Subject to section 36, the Court may, on terms, adjourn any sittings or the trial of any proceedings in such manner as the Court thinks fit.

(2) The Court may give directions as to the orderly transaction of the business of the Court in relation to any proceedings.

(3) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

(4)

(4) Nothing in this section limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or law to adjourn any sittings or trial, or to give directions or to stay proceedings.

Service of documents.

157. Service of a document for the purposes of or in relation to any proceedings shall be effected by a person prescribed in respect of the class of document to which that document belongs, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such other manner as may be prescribed.

Directions where no procedure provided.

158. If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under this Act or the law under which the step is to be taken or by the practice of the Court, the Court may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall for the purposes of the proceedings be regular and sufficient.

Irregularity. No. 52, 1970, s. 81.

159. (1) Where, in the purported commencement of any proceedings or at any stage in the course of or in connection with any proceedings, there is, by reason of anything done or left undone, a failure to comply with any requirement of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect—

(a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings; and

(b)

(b) subject to subsections (2) and (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings, or exercise its powers under the rules to allow amendments and to make orders dealing with the proceedings generally.

(2) The Court shall not wholly set aside any proceedings on the ground that although not constituting an action for the recovery of a debt or liquidated demand they were commenced by the lodging of a statement of liquidated claim.

(3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection (1) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aaware of the irregularity.

Officer acting for corporation.

160. For the purposes of this Act, a corporation may, subject to and in accordance with the rules, authorise an officer of the corporation to sign any document, or do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be deemed to be signed or done by the corporation.

DIVISION 11.—*Rules.*

Rules.

161. (1) The Chief Judge and any four other Judges may make rules for or with respect to—

(a) the procedure (including the method of pleading) and the practice to be followed in the Court in any proceedings (including the procedure and practice

to

to be followed in the offices of the Court) and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any application or appeal which under this or any other Act or Commonwealth Act is to be made to the Court or a registrar;

(b) any matter which, under any Act, may be regulated or prescribed by rules of the Court, or by rules made by the Judges or a majority of Judges or any number of Judges or a Judge;

(c) the joinder of causes of action, the consolidation of proceedings and the joinder, misjoinder and non-joinder of parties;

(d) the continuance of proceedings on the death or bankruptcy of any party or otherwise;

(e) the pleading of cross-claims (whether in the nature of set-off, cross-action or otherwise);

(f) regulating, or empowering a registrar to regulate, the order of business of the Court sitting at any proclaimed place and empowering a Judge or a registrar to give directions as to the steps to be taken to make any proceedings ready for trial, and for this purpose authorising a registrar to exercise the powers of the Court under section 69 (1) (b);

(g) the hearing of proceedings during vacation;

(h) the duties of, and the records to be kept by, the registrars and other officers of the Court in relation to or for the purpose of any proceedings;

(i) any matters relating to the costs of proceedings;

(j) any matters relating to the taxation or other ascertainment of costs payable by a party to another party in proceedings in the Court, including the fixing of scales of costs and witnesses' expenses so payable;

(k) the practice and procedure to be followed in the enforcement of judgments and orders of the Court;

(l) the evidence that may be given at the trial of any proceedings by affidavit, and the circumstances in which evidence may be so given, but so as not to dispense with the attendance of any witness whose attendance for cross-examination is required by any party to the proceedings, and the means by which particular facts may be proved, and the mode in which evidence may be given, in any proceedings;

(m) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence;

(n) prescribing the cases in which security may be required in respect of any proceedings, and the form of any such security, and the manner in which it is to be given, or whether it is to be given to the satisfaction of the registrar;

(o) the payment of money into or out of the Court;

(p) the times for doing any matter or thing for the purposes of this Act or the rules in or in connection with any proceedings;

(q) the giving of notices required by or under this Act to be given;

(r) the amendment, whether by a party or by order of the Court, of any document filed by a party;

(s) the striking out, by order of the Court, of the whole or any part of a statement of claim or a document filed by a party; and

(t) all matters that by this Act (sections 150 and 171 excepted) are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The rules may make provision for or with respect to the bringing of money into court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to—

(a) prescribing the manner in which money may be so brought into court;

(b) without affecting the generality of paragraph (a), deeming money to be brought into court if there is filed a security given by a licensed insurer under the Workers' Compensation Act, 1926, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942;

(c) requiring the insurer who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the insurer; and

(d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into court.

(3) Different rules may be made to apply in different circumstances.

(4) After the commencement of this Act no power conferred by any Act upon the Judges or a majority of Judges or any number of Judges or a Judge to make rules shall be exercised otherwise than by the Chief Judge and any four other Judges making in respect of that matter rules under and in accordance with this Act.

(5)

(5) Any rules made under any power conferred upon the Judges or a majority of Judges or any number of Judges or a Judge by any Act (other than this Act and the District Courts Act, 1912), and in force immediately before the commencement of this Act shall continue in force as though made under this Act.

Gazettal and Parliamentary review.

162. (1) A rule shall—

(a) be published in the Gazette;

(b) take effect on and from the date of publication or a later date specified in the rule; and

(c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice.

163. Judicial notice shall be taken—

(a) of a rule made or purporting to have been made under this Act and published in the Gazette; and

(b) of the date of its publication.

Conditions precedent.

164. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

PART

PART IV.

THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT.

Interpretation: Pt. IV.

165. In this Part—

"appointed place" means place for the time being specified in a proclamation under section 172;

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

Criminal and special jurisdiction of the Court.

166. The Court shall have jurisdiction in respect of all crimes and misdemeanours (other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955), and generally shall have the same jurisdiction and authority, civil and criminal, as each Court of Quarter Sessions had immediately before the commencement of this Act.

Abolition of Courts of Quarter Sessions.

167. Subject to section 194, Courts of Quarter Sessions are abolished.

References to Courts of Quarter Sessions.

168. (1) A reference in any instrument to a Court of Quarter Sessions shall be read and construed as a reference to the Court in its criminal and special jurisdiction.

(2) In subsection (1), the reference to a Court of Quarter Sessions includes a reference to a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.

169.

Judges.

169. (1) A Judge exercising the criminal and special jurisdiction of the Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions would have had, in relation to the like proceedings in a Court of Quarter Sessions, had this Act not been enacted.

(2) A Judge exercising the criminal and special jurisdiction of the Court shall be the sole Judge at the trial of all civil or criminal issues therein, and at the hearing of any application, or the making of any order in reference thereto, and in all other matters relating to the exercise of that jurisdiction.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall be read and construed as a reference to a Judge exercising the criminal and special jurisdiction of the Court.

Clerk of the Peace.

170. The Clerk of the Peace has, in relation to the Court in its criminal and special jurisdiction and to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as he had, in relation to Courts of Quarter Sessions and to proceedings in those Courts, immediately before the commencement of this Act.

Regulations: practice and procedure.

171. (1) The Governor may make regulations for or with respect to regulating and prescribing the practice and procedure of the Court in relation to any proceedings in the Court in its criminal and special jurisdiction.

(2) The regulations made under this section may provide that any provisions of this Act that would, but for this subsection, not apply to or in respect of any proceedings in the Court in its criminal and special jurisdiction shall, to the extent specified in the regulations so made, apply to or in respect of those proceedings.

(3)

(3) The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the Court in its criminal and special jurisdiction or any documents that may be or are issued by or in respect of the Court in that jurisdiction, have effect subject to the regulations made under this section.

(4) Different regulations may be made under this section to apply in different circumstances.

Appointed places.

172. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its criminal and special jurisdiction.

Directions as to sittings.

173. The Governor may, by proclamation, direct that the Court shall sit in its criminal and special jurisdiction at a specified appointed place at specified times.

General provisions as to sittings.

174. (1) Subject to this Part—

(a) the Court may sit simultaneously at different appointed places in its criminal and special jurisdiction;

(b) a Judge shall preside at such sittings of the Court in its criminal and special jurisdiction at such appointed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court in its criminal and special jurisdiction at the one appointed place.

(2)

(2) Where a sitting of the Court in its criminal and special jurisdiction is to be held and the Judge who is to preside at that sitting is not present at the time appointed for the sitting to commence, any justice of the peace may adjourn the sitting to such time as the justice deems convenient.

Hearing of appeals at proclaimed places.

175. Notwithstanding anything in this Part, a Judge sitting at any proclaimed place may, whether or not that proclaimed place is an appointed place, hear and dispose of any appeal made to the Court in its criminal and special jurisdiction.

PART V.

General Provisions.

Order to Judge or officer.

176. If a Judge or officer of the Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring the act to be done, by order direct the Judge or officer to do the act.

Privilege.

177. No privilege shall be allowed to any barrister, solicitor or other person to exempt him from the provisions of this Act.

Proclamations.

178. (1) In this section, "proclamation" means proclamation under this Act, not being the proclamation under section 2.

(2) A power conferred by any provision of this Act to make a proclamation includes the power to revoke or amend that proclamation from time to time.

(3) A proclamation shall—

(a) be published in the Gazette; and

(b) take effect on and from the date of publication or a later date specified in the proclamation.

Judges to meet and make recommendations.

179. (1) The Judges shall assemble at least once in every six months for the purpose of—

(a) considering the operation of this Act and the rules;

(b) considering the working of the offices of the Court; and

(c) inquiring into and examining any defects which appear to exist in the system of procedure or the administration of justice in the Court.

(2) The Judges shall at least once in every six months furnish a report to the Attorney-General as to what (if any) legislation or rules, regulations, by-laws or ordinances it would, in their judgment, be expedient to enact or make for the better administration of justice in the Court.

PART VI.

Repeals, Amendments, Savings and Transitional Provisions.

Division 1.—*General.*

Repeals.

180. Each Act mentioned in Schedule 1 is repealed.

Amendments.

181. Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

182.

182. A repeal made by section 180 or an amendment made by section 181 shall not revive anything not in force or existing immediately before the commencement of this Act. Non-revivor. No. 52, 1970, s. 9.

183. Except as provided in this Part, nothing in this Part limits any saving in the Interpretation Act, 1897. Operation of Interpretation Act, 1897.

DIVISION 2.—*The Civil Jurisdiction of the Court.*

184. In this Division— Interpretation: Pt. VI, Div. 2.

"district" means district referred to in section 5 of the District Courts Act, 1912;

"former Court" means a District Court established under the District Courts Act, 1912, and includes a court referred to in an instrument as "the District Court" or "the district court";

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act;

"the new Court" means the Court.

185. (1) A proclamation made under section 4 (1) of the District Courts Act, 1912, and in force immediately before the commencement of this Act, shall— Savings as to places, sittings, Judges and officers.

(a) in so far as it specifies the towns and places at which former Courts shall be holden—be deemed to be a proclamation under section 31 (2) specifying proclaimed places; and

(b)

(b) in so far as it specifies the times at which former Courts shall be holden—shall be deemed to be a proclamation under section 32 (2) directing that the new Court shall sit in its civil jurisdiction at those times at the proclaimed places specified therein.

(2) A person appointed as a judge under section 14 of the District Courts Act, 1912, and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed as a Judge under section 13 of this Act.

(3) A person appointed to sit and act as a judge under section 19A of the District Courts Act, 1912, and whose appointment continues in force immediately before the commencement of this Act, shall be deemed to have been appointed to act as a Judge under section 18 of this Act, but he shall not, by virtue of this subsection, hold office as such for a time longer than that for which he was appointed to exercise jurisdiction under section 19A of the District Courts Act, 1912.

(4) The person who was, immediately before the commencement of this Act, the Chairman of the District Court Judges shall be deemed to have been appointed as the Chief Judge under section 13 (4).

(5) A person appointed as a judge under the District Courts Act, 1912, and not holding office as such immediately before the commencement of this Act, and the widow of any such person, shall, notwithstanding anything in this Act, have the same rights as to salary, pension or otherwise which he or she would have had if this Act had not been enacted.

(6) A person holding office immediately before the commencement of this Act as the registrar of the District Court of the Metropolitan District holden at Sydney under section 21 (2) (a) of the District Courts Act, 1912, or as an

assistant

assistant registrar of that Court under section 24 of that Act shall be deemed to have been appointed as the registrar for Sydney under section 19 (2) of this Act or as an assistant registrar for Sydney under section 22 (1) of this Act, as the case may require.

(7) A person holding office immediately before the commencement of this Act as a bailiff for a former Court appointed under section 26 (3) of the District Courts Act, 1912, or an officer appointed under section 26 (4) of that Act to assist a bailiff for a former Court, shall be deemed to have been appointed under section 25 (3) of this Act as a bailiff, or under section 26 (1) of this Act as an assistant bailiff, as the case may require, of the new Court for the proclaimed place that is the place at which the former Court was ordered, under section 4 (1) of the District Courts Act, 1912, to be holden.

Pending proceedings, etc.

186. (1) Subject to the rules, and unless the Court otherwise orders—

(a) any proceedings pending in a former Court immediately before the commencement of this Act shall be continued in and disposed of by the new Court sitting at the proclaimed place that is the place at which the former Court was holden immediately before the commencement of this Act, but otherwise those proceedings shall be continued and disposed of as if this Act had not been enacted;

(b) any judgment or order of the new Court in proceedings referred to in paragraph (a) shall be enforceable in accordance with this Act and the rules;

(c) except as provided in paragraph (d), any judgment or order of a former Court shall be enforceable in accordance with this Act and the rules by the new Court sitting at the proclaimed place at which the

former

former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act;

(d) any judgment or order of a former Court shall, as regards any step taken in the enforcement of the judgment or order before the commencement of this Act, be enforceable by the new Court sitting at the proclaimed place at which the former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act, but otherwise shall be enforceable as if this Act had not been enacted; and

(e) the entitlement of any party to costs in respect of proceedings commenced before the commencement of this Act and completed after that commencement shall be ascertained as if this Act had not been enacted.

(2) For the purposes of continuing any proceedings in, or enforcing any judgment or order in, the new Court sitting at a proclaimed place, that place shall be deemed to be the proper place in relation to those proceedings or the proceedings in which the judgment was given or entered up or the order was made, as the case may require.

(3) Unless the Supreme Court in a particular case otherwise orders—

(a) Division 7 of Part III (section 126 excepted) applies to and in respect of proceedings in, or a judgment or order of, a former Court as if they or it were proceedings in, or a judgment or order of, the new Court; and

(b) any appeal made under Part VI of the District Courts Act, 1912, and pending in the Supreme Court immediately before the commencement of this Act shall be deemed to have been made under Division 7 of Part III of this Act.

References to District Court in existing instruments.

187. (1) In an instrument—

(a) subject to paragraphs (b) and (c), a reference to a former Court shall be read and construed as a reference to the new Court;

(b) subject to paragraph (c), a reference to a former Court within the jurisdiction of which, or within the district of which, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(c) a reference to a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) In an instrument, a reference to the Metropolitan District Court (however expressed) shall be read and construed as a reference to the new Court sitting at Sydney.

(3) Where under any instrument any power is vested in a former Court, the power shall be exercised by the new Court in all respects as it might have been exercised immediately before the commencement of this section, but in accordance with this Act and the rules.

188.

References to District Court judges in existing instruments.

188. (1) Subject to subsection (3), in an instrument—

(a) a reference to the Chairman of the District Court Judges shall be read and construed as a reference to the Chief Judge;

(b) subject to paragraphs (c) and (d), a reference to a District Court judge shall be read and construed as a reference to a Judge appointed under this Act;

(c) subject to paragraph (d), a reference to a District Court judge within whose jurisdiction, or within whose district, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(d) a reference to a District Court judge occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) Subject to subsections (1) (c) and (d) and (3), where under an instrument a power (other than a power to make rules) is vested in the District Court judges, or in any number of them, or a majority of them, or any one of them that power shall be exercised by the new Court in all respects as those judges or that judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.

(3)

(3) The Governor may direct by proclamation that— No. 52, 1970, s. 24 (7).

(a) subsection (1) (c) and (d) shall not apply to a reference specified in the proclamation; or

(b) subsection (2) shall not apply to any power specified in the proclamation,

and the proclamation shall have effect accordingly, but subject to subsection (5).

(4) A proclamation under subsection (3) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication of the proclamation in the Gazette.

(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation under subsection (3) has been laid before it, disallowing the proclamation or any part of it, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

References to registrars and bailiffs in existing instruments.

189. In an instrument—

(a) subject to paragraphs (b) and (c), a reference to a registrar or bailiff of a former Court shall be read and construed as a reference to a registrar or bailiff of the new Court;

(b) subject to paragraph (c), a reference to the registrar or a bailiff of a former Court shall, if the reference to that former Court is, under section 187 (1) (b) or (c), to be read and construed as a reference to the new Court sitting at a proclaimed place specified

in

in section 187 (1) (b) or specified in or determined in accordance with the rules, be read and construed as a reference to the registrar or a bailiff of the new Court for that place; and

(c) a reference to a registrar or bailiff of a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the registrar or a bailiff of the new Court for the proclaimed place specified in or determined in accordance with the rules.

References to writs, etc., in existing instruments.

190. (1) In an instrument—

(a) a reference to a writ of fieri facias issued out of a former Court shall be read and construed as a reference to a writ of execution issued out of the new Court; and

(b) a reference to a writ of capias ad satisfaciendum issued out of a former Court shall be read and construed as a reference to a writ against the person issued out of the new Court.

(2) In an instrument, a reference to an action of or proceedings in ejectment in a former Court includes a reference to proceedings for possession of land under Division 8 of Part III.

Provisions as to practice and procedure in existing instruments.

191. The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the new Court or any documents that may be or are issued by or in respect of the new Court, have effect subject to the rules.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court.*

192. In this Division— Interpretation: Pt. VI, Div. 3.

"appointed place" has the meaning ascribed to it by section 165;

"former Court" means a Court of Quarter Sessions;

"the new Court" means the Court.

193. A proclamation made under section 569 of the Crimes Act 1900 appointing the times and places at which former Courts shall be held, and in force immediately before the commencement of this Act, shall— Savings as to places and sittings.

(a) in so far as it specifies the places at which former Courts shall be held—be deemed to be a proclamation under section 172 (2) specifying appointed places; and

(b) in so far as it specifies the times at which former Courts shall be held—be deemed to be a proclamation under section 173 directing that the new Court shall sit in its criminal and special jurisdiction at those times at the appointed places specified therein.

194. Notwithstanding anything in Part IV or Division 1, where any proceedings were pending in a former Court immediately before the commencement of this Act— Pending proceedings.

(a) that former Court shall continue in existence for the purpose only of the hearing and disposing of those proceedings; and

(b) those proceedings shall be heard and disposed of in all respects as if this Act had not been enacted.

SCHEDULE

SCHEDULE 1.

Sec. 180.

REPEALS.

Year and number of Act.	Short title of Act.
1901, No. 48 ..	Inter-state Debts Recovery Act, 1901.
1912, No. 23 ..	District Courts Act, 1912.
1920, No. 9 ..	Quarter Sessions Enabling Act, 1920.
1924, No. 30 ..	District Courts (Judges Pensions) Act, 1924.
1928, No. 7 ..	Supreme Court and District Courts (Judges) Act, 1928.
1932, No. 34 ..	District Courts (Validation and Amendment) Act, 1932.
1932, No. 35 ..	District Courts (Further Validation and Amendment) Act, 1932.
1936, No. 4 ..	District Courts (Amendment) Act, 1936.
1940, No. 44 ..	Attachment of Wages Limitation Act, 1940.
1949, No. 44 ..	District Courts (Amendment) Act, 1949.
1951, No. 19 ..	District Courts (Amendment) Act, 1951.
1955, No. 20 ..	District Courts (Amendment) Act, 1955.
1958, No. 11 ..	District Courts (Amendment) Act, 1958.
1961, No. 18 ..	District Courts and Small Debts Recovery (Amendment) Act, 1961.

SCHEDULE 2.

Sec. 181.

AMENDMENT OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
60 Vic. No. 23	Municipal Council of Sydney Electric Lighting Act 1896–1928	Section 1— Omit "1896–1928", insert instead ", 1896". Section 38— Omit "; and in every such proceeding the defendant may, except in the Supreme Court, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon".
1898, No. 11..	Evidence Act, 1898	Section 43B— Omit the section.
1899, No. 18..	Landlord and Tenant Act, 1899	Section 1— Omit the matter relating to Part III. Section 2A (1)— Omit "or proceedings under section seventeen of this Act". Part III— Omit the Part.
1899, No. 20..	Police Regulation Act, 1899	Section 26 (1)— Omit "and may, except in the Supreme Court, plead the general issue,".
1899, No. 24..	Stage-carriages Act, 1899	Section 14— Omit the section, insert instead the following section:— Commencement of action. 14. An action against any person for anything done in pursuance of this Act shall be commenced within three months after the act is committed and not afterwards.
1900, No. 25..	Real Property Act, 1900	Section 105 (1)— (a) Omit "the registrar or bailiff of any", insert instead "a bailiff of the"; (b) Omit "or District Court". Section 105 (2)— Omit "the registrar or bailiff of any", insert instead ", subject to section 110 (6) of the District Court Act, 1973, a registrar of the".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1900, No. 40..	Crimes Act 1900	Section 563 (1)— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue, and give the special matter in evidence thereupon". Section 563 (3)— Omit the subsection. Sections 568–571 (inclusive)— Omit the sections.
1901, No. 5 ..	Police Offences Act, 1901	Section 114 (3) and (5)— Omit the subsections.
1901, No. 8 ..	Judgment Creditors' Remedies Act, 1901	Section 13 (2)— Omit "or to the sheriff of any district". Section 17 (1)— Omit "warrant or". Section 24— Omit the section.
1901, No. 9 ..	Anatomy Act, 1901	Section 20 (2)— Omit the subsection.
1901, No. 28..	Hawkers and Pedlers Act, 1901	Section 26— (a) Omit "and in such action the defendant, except in the Supreme Court, may plead the general issue and at the trial give this Act and the special matter in evidence,"; (b) Omit ", and if any such action is in a District Court and judgment is given against the plaintiff or the plaintiff is nonsuited or discontinues such action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has in other cases".

SCHEDULE

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1901, No. 33..	Inclosed Lands Protection Act, 1901	Section 9— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue and give this Act and the special matter in evidence at the trial of such action".
1901, No. 45..	Married Women's Property Act, 1901	Section 1— Omit "Women's Property", insert instead "Persons (Property and Torts)". Section 22 (1)— Omit "within whose jurisdiction", insert instead "sitting at the proclaimed place nearest to the place where". Section 22 (3)— Omit the subsection, insert instead the following subsection:— (3) Section 128 of the District Court Act, 1973, applies to and in respect of any such application to the District Court as if the application were an action within the meaning of that Act.
1902, No. 27..	Justices Act, 1902	Section 142— Omit the section. Section 145— Omit the section.
1902, No. 66..	Pawnbrokers Act, 1902	Section 46— Omit the section.
1908, No. 31..	Pure Food Act, 1908	Section 20— Omit "Division 7 of Part III of the District Courts Act, 1912–1936, shall apply, mutatis mutandis, to any such appeal.".
1912, No. 30..	Government Railways Act, 1912	Section 144 (4)— Omit the subsection.
1912, No. 31..	Jury Act, 1912	Section 3— Omit "any district court", insert instead "the District Court". Section 5 (a)— Omit "district courts, chairmen of courts of quarter sessions", insert instead "the District Court".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 8— Omit "or any court of quarter sessions or district court". Section 15 (1)— Omit "a district court or a court of quarter sessions", insert instead "the District Court". Section 15 (2)— Omit "district court, or in any court of quarter sessions", insert instead "the District Court". Section 22— Omit ", or a district court, or court of quarter sessions", insert instead "or the District Court". Section 27 (1)— Omit "courts of quarter sessions", insert instead "the District Court". Section 29— Insert at the end of the section the following new subsection:— (2) Subject to the provisions of this Act and of any other Act in force for the time being, where proceedings in the District Court in its civil jurisdiction are to be tried with a jury, all issues of fact in the proceedings shall be tried, and all damages and sums of money recoverable in those proceedings shall be assessed, before a Judge of that Court, by a jury consisting of four persons duly qualified according to law as jurors, and returned and chosen as hereinafter mentioned. Section 30— Omit "said court" wherever occurring, insert instead "Supreme Court". Section 30A— After "civil trial" insert "in the Supreme Court or the District Court". Section 32 (1)— Omit "courts of quarter sessions", insert instead "District Court". Section 32 (2A)— After section 32 (2) insert the following new subsection:— (2A) Every such precept returnable in the District Court in its civil juris-

SCHEDULE

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 32 (2A)—*continued.* diction shall be under the hand of the registrar for the proclaimed place at which it is returnable. Section 32 (3)— (a) Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction"; (b) Omit "a chairman of a court of quarter sessions", insert instead "a Judge of the District Court". Section 36 (2)— Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction". Section 36 (3)— After section 36 (2) insert the following new subsection:— (3) No such precept returnable in the District Court in its civil jurisdiction shall require the sheriff to summon at any one time more than forty-eight or less than twelve jurors. Section 37— Omit ", or a district court, or a court of quarter sessions", insert instead "or the District Court". Section 45 (1)— Omit "a sitting of a court of quarter sessions", insert instead "the District Court". Section 57 (1)— Omit " a court of quarter sessions", insert instead "the District Court". Section 70— Omit "courts of quarter sessions", insert instead "the District Court". Section 72— Omit the section. Section 86— (a) Omit from paragraph (b) "a court of quarter sessions or by a chairman thereof", insert instead "the District Court in its criminal and special jurisdiction or by a Judge of the District Court exercising that jurisdiction";

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	(b) After paragraph (b) insert the following new paragraph:— (c) all fines imposed under this Act by the District Court in its civil jurisdiction shall be levied and recovered in accordance with the rules of the District Court.
1912, No. 73..	Irrigation Act, 1912	Section 17c (4)— Omit the subsection.
1913, No. 7 ..	Crown Lands Consolidation Act, 1913	Section 249— Omit "And in every such proceeding, other than a proceeding in the Supreme Court, the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon.".
1919, No. 41..	Local Government Act, 1919	Section 580 (8)— Omit the subsection.
1924, No. 42..	Administration of Justice Act, 1924	Section 2— (a) Omit "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901—*ss.* 8, 9."; (b) Omit "DIVISION 2.—*District Courts Act*, 1912—*s.* 10.". Part III— Omit the heading "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901.". Section 8— Omit the section. Section 9— Omit the section. Part III— Omit the heading "DIVISION 2.—*The District Courts Act*, 1912.". Section 10— Omit the section.
1930, No. 18..	Transport Act, 1930	Section 168 (4)— (a) After "recovered" insert "in the District Court"; (b) Omit "district court in such district court as the Transport Appeal Court directs", insert instead "District Court". Section 233 (4)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1932, No. 3 ..	Ministry of Transport Act, 1932	Section 17 (4)— Omit the subsection.
1932, No. 31..	Transport (Division of Functions) Act, 1932	Section 28 (4)— Omit the subsection.
1935, No. 47..	Maritime Services Act, 1935	Section 40 (5)— Omit the subsection.
1937, No. 35..	Statute Law Revision Act, 1937	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1939, No. 29..	Drainage Act, 1939	Section 71 (1)— After "debt" insert "or liquidated demand". Section 71 (2)— Omit the subsection.
1947, No. 41..	Jury (Amendment) Act, 1947	Section 6 (1) and (3)— Omit the subsections.
1950, No. 22..	Electricity Commission Act, 1950	Section 100 (7)— Omit the subsection.
1951, No. 11..	Sydney Harbour Transport Act, 1951	Section 34 (7)— Omit the subsection.
1951, No. 43..	Matrimonial Causes (Amendment) Act, 1951	Section 1 (3)— Omit the subsection. Section 2 (1)— Omit the subsection.
1953, No. 41..	Judges' Pensions Act, 1953	Section 2— From the definition of "Judge" omit "Chairman of the District Court Judges, District Court judge", insert instead "Chief Judge or Judge of the District Court".

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1953, No. 41—*continued*	Judges' Pensions Act, 1953—*continued*	Section 2B— After section 2A insert the following new section:— Continuity of judicial office in the District Court. 2B. The office of Chairman of the District Court Judges and of District Court judge under the District Courts Act, 1912, shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, under the District Court Act, 1973. Section 8 (3)— Omit "or an acting judge of any District Court", insert instead "an acting judge of a District Court (under the District Courts Act, 1912), or an acting Judge of the District Court (under the District Court Act, 1973)". Section 13 (2)— Omit the subsection.
1954, No. 36..	Grain Elevators Act, 1954	Section 56 (7)— Omit the subsection.
1957, No. 28..	Attachment of Wages Limitation Act, 1957	Section 3— Omit the section.
1961, No. 29..	Industrial Arbitration (Basic Wage) Amendment Act, 1961	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1963, No. 59..	State Planning Authority Act, 1963	Section 70 (7)— Omit the subsection.
1964, No. 37..	Industrial Arbitration (Amendment) Act, 1964	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 12..	Supreme Court and Circuit Courts (Amendment) Act, 1965	Section 8— Omit the section. Schedule— Omit so much as relates to the District Courts Act, 1912.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1965, No. 32..	Law Reform (Miscellaneous Provisions) Act, 1965	Section 3— Omit so much as relates to Parts II, VII, VIII. Part II— Omit the Part. Section 13— Omit the section. Section 14— Omit the section. Part VII— Omit the Part. Part VIII— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 33..	Decimal Currency Act, 1965	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1967, No. 35..	National Parks and Wildlife Act, 1967	Section 45 (1)— After "debt" insert "or liquidated demand". Section 45 (2)— Omit the subsection.
1967, No. 86..	Industrial Arbitration (Basic Wage) Amendment Act, 1967	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 3 ..	Administration of Justice Act, 1968	Section 3— Omit so much as relates to Part IX. Part IX— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968	Section 44 (7)— Omit the subsection.
1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968	Section 53 (9)— Omit the subsection.

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 11..	Courts of Petty Sessions (Civil Claims) Act, 1970	Section 12 (2)— Omit "a District Court having jurisdiction in the matter under section seven of the District Courts Act, 1912", insert instead "the District Court sitting at the nearest proclaimed place to the place— (a) where the defendant, or any one of two or more defendants, is resident or carries on his business; or (b) where the cause of action arose". Section 12 (3)— Omit "District Court to which the action is ordered to be transferred", insert instead "registrar of the District Court for the proclaimed place mentioned in the order". Section 12 (4)— (a) Omit "a District Court", insert instead "the District Court"; (b) Omit "District Courts Act, 1912", insert instead "District Court Act, 1973"; (c) Omit "that District Court", insert instead "the District Court". Section 12 (5)— Omit "a District Court", insert instead "the District Court".
1970, No. 29..	Dairy Industry Authority Act, 1970	Section 81 (9)— Omit the subsection.
1970, No. 52..	Supreme Court Act, 1970	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 60..	Minors (Property and Contracts) Act, 1970	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 95..	State Pollution Control Commission Act, 1970	Section 30 (9)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 96..	Summary Offences Act, 1970	Section 65 (5)— Omit the subsection.
1970, No. 97..	Waste Disposal Act, 1970	Section 54 (9)— Omit the subsection.

BY AUTHORITY
V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973
[$1.20]

PROOF

DISTRICT COURT BILL, 1973

EXPLANATORY NOTE

THE objects of this Bill are to establish a District Court of New South Wales (hereinafter referred to as "the Court") with jurisdiction throughout the State, in place of the several District Courts and Courts of Quarter Sessions, and to make provision for the practice and procedure of the Court.

The Bill—

(a) makes provision for a Chief Judge, Judges, registrars, bailiffs and other officers of the Court and for their powers, authorities, duties and functions;

(b) provides for the proclamation of the cities, towns or other places at which the Court may sit and generally for the sittings of the Court;

(c) confers on the Court—

(i) jurisdiction to hear personal actions at law where the amount claimed does not exceed $10,000;

(ii) jurisdiction to hear actions for the recovery of not more than $10,000, being the whole or part of the unliquidated balance of a partnership account, a distributive share under an intestacy or a legacy under a will;

(iii) jurisdiction to hear, with the consent of the defendant, actions of the nature referred to in subparagraphs (i) and (ii) where the amount claimed exceeds $10,000;

(iv) power to grant in an action an injunction which might have been granted by the Supreme Court if the action had been brought in the Supreme Court;

(v) the same jurisdiction as the Supreme Court in proceedings (otherwise than under the Landlord and Tenant Act, 1899) for the possession of land the value of which does not exceed $10,000 and in certain equity proceedings where the subject of the claim does not exceed $5,000;

(vi) jurisdiction to grant temporary injunctions to restrain a threatened or apprehended trespass or nuisance, or the breach of a negative stipulation in a contract the consideration for which does not exceed $5,000;

(vii) the jurisdiction previously exercised by the several District Courts otherwise than under the District Courts Act, 1912; and

(viii) the jurisdiction previously exercised by the several Courts of Quarter Sessions, including jurisdiction in respect of all crimes and misdemeanours (other than those punishable or formerly punishable by death);

(d) provides for the commencement of civil proceedings in the Court;

(e) provides for—

(i) the bringing of actions to trial;

(ii) the trial of and disposal of actions; and

(iii) judgment by default, confession or agreement;

(f) permits an action in which the amount claimed does not exceed $20, and which could have been commenced in a court of petty sessions, to be commenced in the Court only with the leave of the Court;

(g) provides that a judgment debt is payable as a lump sum or in certain circumstances by instalments;

(h) provides for the examination of the financial position of a judgment debtor in certain circumstances;

(i) provides the following means of enforcing a judgment in an action:—

(i) the making of a garnishee order attaching certain debts owing to the judgment debtor or his wage or salary;

(ii) the issue of a writ of execution against the goods and lands of the judgment debtor; and

(iii) the issue of a writ against the person of the judgment debtor if he is about to leave the Commonwealth, or to remove property from the Commonwealth, with intent to evade payment of the judgment debt;

(j) makes provision for relief by way of interpleader on the application of a defendant in an action or a bailiff acting or intending to act under a writ of execution;

(k) provides for the payment of costs in civil proceedings in the Court and the taxation of those costs;

(l) enables the making of an application to the Court or the Supreme Court for a new trial in civil proceedings in the Court in certain circumstances;

(m) confers a right of appeal from the Court to the Supreme Court—

(i) on a point of law, or on the admission or rejection of evidence, in civil proceedings in the Court; and

(ii) in the case of an action involving an injunction referred to in paragraph (c) (iv)—on a question of fact;

(n) provides for the transfer of civil proceedings to the Court from the Supreme Court, and vice versa;

(o) empowers the making of rules of court for the practice and procedure of the Court (including the manner of pleading) in its civil jurisdiction and other matters, subject to Parliamentary disallowance;

(p) empowers the Governor to make regulations for the practice and procedure of the Court with respect to the jurisdiction referred to in paragraph (c) (viii);

(q) repeals the District Courts Act, 1912, and sections 568 to 571 of the Crimes Act 1900, and effects certain other repeals and amendments;

(r) makes other provisions of a minor, consequential or ancillary character.

PROOF

No. , 1973.

A BILL

To establish a District Court of New South Wales; to provide for the appointment of, and the powers, authorities, duties and functions of, Judges and other officers of the Court; to empower the Court to hear and dispose of certain civil and criminal proceedings; to abolish the several District Courts and Courts of Quarter Sessions; to repeal the District Courts Act, 1912, and certain other Acts; to amend the Crimes Act 1900 and certain other Acts; and for purposes connected therewith.

[Mr McCaw—1 *March*, 1973.]

BE

4499 210—A

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "District Court Act, 1973".

Commencement.

2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–7.

PART II.—THE DISTRICT COURT OF NEW SOUTH WALES—*ss.* 8–18.

DIVISION 1.—*Establishment of the Court—ss.* 8–11.

DIVISION 2.—*Judges—ss.* 12–18.

PART III.—THE CIVIL JURISDICTION OF THE COURT —*ss.* 19–164.

DIVISION 1.—*Officers and General Provisions—ss.* 19–43.

Subdivision 1.—*Registrars—ss.* 19–24.

Subdivision 2.—*Bailiffs—ss.* 25–30.

Subdivision 3.—*Sittings of the Court—ss.* 31–39.

Subdivision 4.—*Change of venue*—*s.* 40.

Subdivision 5.—*Parties*—*ss.* 41, 42.

Subdivision 6.—*Right of appearance*—*s.* 43.

DIVISION 2.—*Actions*: *Jurisdiction*—*ss.* 44–51.

Subdivision 1.—*General jurisdiction in relation to actions*—*ss.* 44–48.

Subdivision 2.—*Splitting and dividing of causes of action and abandonment*—*ss.* 49, 50.

Subdivision 3.—*Jurisdiction by consent*—*s.* 51.

DIVISION 3.—*Actions*: *Procedure*—*ss.* 52–83.

Subdivision 1.—*General*—*s.* 52.

Subdivision 2.—*Commencement of actions*—*ss.* 53–55.

Subdivision 3.—*Defences*—*s.* 56.

Subdivision 4.—*Order for judgment and judgment by default*—*ss.* 57, 58.

Subdivision 5.—*Judgment by confession or agreement*—*ss.* 59–62.

Subdivision 6.—*Arbitration*—*s.* 63.

Subdivision 7.—*Witnesses, evidence and ancillary matters*—*ss.* 64–70.

Subdivision 8.—*Trial and jury*—*ss.* 71–80.

Subdivision 9.—*Judgments and orders*—*ss.* 81–83.

DIVISION 4.—*Actions*: *Enforcement of Judgments*—*ss.* 84–114.

Subdivision 1.—*General*—*ss.* 84–86.

Subdivision 2.—*Payment of judgment debt*—*ss.* 87–89.

Subdivision 3.—*Examination of judgment debtor*—*ss.* 90–96.

Subdivision

Subdivision 4.—*Attachment of debts—ss.* 97–106.

Subdivision 5.—*Writ of execution—ss.* 107–112.

Subdivision 6.—*Writ against the person—ss.* 113, 114.

DIVISION 5.—*Actions*: *Interpleader—ss.* 115–118.

DIVISION 6.—*Actions*: *Costs—ss.* 119–124.

DIVISION 7.—*Actions*: *New Trial and Appeal—ss.* 125–131.

DIVISION 8.—*Miscellaneous Jurisdiction—ss.* 132–142.

Subdivision 1.—*General—s.* 132.

Subdivision 2.—*Possession of land and equity proceedings—ss.* 133–139.

Subdivision 3.—*Temporary injunctions—ss.* 140–142.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court—ss.* 143–148.

Subdivision 1.—*Transfer of proceedings from Supreme Court—ss.* 143, 144.

Subdivision 2.—*Transfer of proceedings to Supreme Court—ss.* 145–148.

DIVISION 10.—*Miscellaneous Provisions—ss.* 149–160.

DIVISION 11.—*Rules—ss.* 161–164.

PART IV.—THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT—*ss.* 165–175.

PART V.—GENERAL PROVISIONS—*ss.* 176–179.

PART VI.—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS—*ss.* 180–194.

DIVISION 1.—*General—ss.* 180–183.

DIVISION

DIVISION 2.—*The Civil Jurisdiction of the Court—ss.* 184–191.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court—ss.* 192–194.

SCHEDULES.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: general.

"action" means action in the Court, but does not include any proceedings under Division 8 of Part III or under Part IV;

"admitted set-off", in relation to an action, means set-off admitted by the plaintiff in the statement of claim lodged by him to commence the action or, where a defendant pleads a cross-claim, by the defendant in the prescribed notice of the cross-claim;

"barrister" means person who is on the roll of barristers in the Supreme Court;

"Chief Judge" means Chief Judge of the Court;

"corporation" includes any body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person;

"file", in relation to any proceedings, means lodge with the registrar for the proper place in relation to the proceedings, for inclusion in the record of the Court;

"Judge" means Judge of the Court;

"judgment", in relation to an action, means judgment given or entered up in the action;

"land" includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate

or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity;

"minor" means person under the age of eighteen years;

"officer", in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"prescribed" means prescribed by this Act or the rules;

"proceedings" means proceedings in the Court;

"proclaimed place" means place for the time being specified in a proclamation under section 31;

"proper place", in relation to any proceedings in the Court in its civil jurisdiction—

(a) where there has been no change of venue in respect of the proceedings—means the proclaimed place at which the proceedings were commenced;

(b) where there has been only one change of venue in respect of the proceedings—means the proclaimed place to which the venue was changed; or

(c) where there have been two or more changes of venue in respect of the proceedings—means the proclaimed place to which the venue was last changed;

"registry", in relation to a proclaimed place, means the office of the registrar for the proclaimed place;

"rules" means rules made under this Act;

"solicitor"

"solicitor" means attorney, solicitor and proctor of the Supreme Court;

"statement of claim" means ordinary statement of claim or statement of liquidated claim, as referred to in section 53;

"the Court" means the District Court of New South Wales;

"the registrar", in relation to any proceedings, means the registrar for the proper place in relation to the proceedings;

"writ against the person" means writ against the person issued under section 113;

"writ of execution" means writ of execution issued under section 107.

(2) A reference in this Act—

(a) to the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under section 58, 60 or 61; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with section 58, 60 or 61.

(3) A reference in this Act to the commencement of proceedings at a proclaimed place (however expressed) is a reference to the commencement of those proceedings by the lodging of the statement of claim or other document commencing the proceedings with the registrar for that place.

(4) A reference in this Act to the issue of a document at a proclaimed place (however expressed) is a reference to the issue of that document by the registrar for that place.

(5) A reference in this Act to a stay of proceedings (however expressed) includes a reference to a stay of enforcement of the judgment arising from the proceedings.

(6) A reference in this Act to a stay of enforcement of a judgment includes a reference to a stay of the issue of—

(a) an examination summons under section 91 (1);

(b) a warrant under section 92 (4); and

(c) a charging order under the Judgment Creditors' Remedies Act, 1901,

in respect of the judgment debt.

Interpretation: nearest proclaimed place.

5. (1) A reference in this Act to the nearest proclaimed place to another place (however expressed) is a reference to the proclaimed place the distance between the principal registry for which and that other place is shorter than the distance between any other principal registry and that other place.

(2) In subsection (1)—

"distance" means distance computed in accordance with the rules;

"principal registry", in relation to a proclaimed place, means—

(a) where there is only one registry for the proclaimed place—that registry; or

(b) where there are two or more registries for the proclaimed place—the registry specified in, or determined in accordance with, the rules as being the principal registry for the proclaimed place.

(3) The Governor may, at his discretion, by proclamation, specify an address or a place at which the principal registry for a proclaimed place shall be deemed to be situated,

and

and that principal registry shall, for the purposes of subsection (1), be deemed to be situated at the address or place so specified, notwithstanding that it may be situated elsewhere.

Order on terms. No. 52, 1970, s. 21.

6. Where under this Act or the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

Application of certain provisions of this Act.

7. The provisions of Part III and Division 2 of Part VI and the rules—

(a) apply to and in respect of proceedings in the Court in its civil jurisdiction; and

(b) except as provided by Part IV, do not apply to or in respect of proceedings in the Court in its criminal and special jurisdiction.

PART II.

The District Court of New South Wales.

Division 1.—*Establishment of the Court.*

The Court.

8. (1) There shall be a District Court of New South Wales.

(2) The Court shall be a court of record.

(3) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

9.

9. (1) The Court shall have a civil jurisdiction, consisting of— Jurisdiction of the Court generally.

(a) its jurisdiction conferred by Part III; and

(b) the jurisdiction conferred by or under any other Act or law on the Court, not being its jurisdiction referred to in subsection (2).

(2) The Court shall have a criminal and special jurisdiction, consisting of—

(a) its jurisdiction conferred by Part IV; and

(b) the jurisdiction conferred by or under any other Act or law on the Court in its criminal and special jurisdiction, its criminal jurisdiction or its special jurisdiction.

10. The Court, wherever sitting, shall, subject to this Act, have jurisdiction throughout the whole of New South Wales. State-wide jurisdiction.

11. (1) All proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the Jury Act, 1912, be heard and disposed of before a Judge, who shall constitute the Court. Single Judge to constitute the Court. No. 52, 1970, s. 40.

(2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before a registrar or other officer of the Court.

DIVISION 2.—*Judges.*

12. The Court shall be composed of a Chief Judge and such other Judges as the Governor may from time to time appoint. Composition of the Court.

13. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment and qualification of Judges.

(2) A person is qualified to be appointed as a Judge if he is—

(a) a barrister of not less than five years' standing;

(b) a solicitor of not less than seven years' standing; or

(c) a barrister or a solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(3) A barrister or solicitor shall not be appointed to be a Judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately preceding his appointment.

(4) The Governor may, by the commission of a person's appointment as a Judge or by a subsequent commission under the public seal of the State, appoint a Judge to be Chief Judge.

(5) Subject to subsection (6), the Chief Judge shall hold office as Chief Judge so long as he holds office as a Judge.

(6) With the approval of the Governor, the Chief Judge may resign his office as Chief Judge without resigning his office as a Judge.

(7) A Judge shall, while he holds office as such, be deemed to have been appointed a justice of the peace.

14. (1) Subject to the Judges Retirement Act, 1918, a Judge shall hold his office during ability and good behaviour. **Judge's tenure.**

(2) The Governor may remove a Judge for inability or misbehaviour.

(3) A Judge shall not be removed from office under subsection (2) unless, before being so removed, he has been given twenty-one days' notice of the intention to remove him and he has within that time been given an opportunity of making representations to the Governor and of being heard before the Governor in Council.

(4) A Judge shall not practise as a barrister or solicitor, or be directly or indirectly concerned in the practice or profession of a barrister or solicitor, or be capable of being summoned, or elected, or of sitting, as a member of Parliament.

15. (1) The annual salary— **Salaries.**

(a) of the Chief Judge shall be $24,650; and

(b) of any other Judge shall be $22,580.

(2) The salary payable to each Judge in accordance with subsection (1), together with any statutory or other allowance, shall be paid to him so long as he continues to hold office.

16. (1) Where there is a vacancy in the office of Chief Judge, or the Chief Judge is absent from his duties, the senior of the other Judges willing to act as Chief Judge shall, if there is no Acting Chief Judge appointed under section 17, act as Chief Judge, and shall, while so acting, have the powers and authorities and fulfil the duties of the Chief Judge. **Vacancy in office of or absence of Chief Judge.**

(2)

(2) For the purposes only of subsection (1)—

(a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act or the District Courts Act, 1912, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge; and

(b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commissions or, failing any such assignment, according to the order of their being sworn.

Acting Chief Judge.

17. (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his duties.

(2) While holding office, the Acting Chief Judge shall have the powers and authorities and fulfil the duties of the Chief Judge, and shall receive a salary and allowances at the rate provided for the Chief Judge.

Acting Judges.

18. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding six months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed, for the time and subject to the conditions or limitations specified in his commission, shall have the powers and authorities and fulfil the duties of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.

PART

PART III.

THE CIVIL JURISDICTION OF THE COURT.

DIVISION 1.—*Officers and General Provisions.*

Subdivision 1.—*Registrars.*

Registrars.

19. (1) There shall be a registrar of the Court for each proclaimed place.

(2) The registrar for Sydney, and for any other proclaimed place specified for the purposes of this subsection by the Minister by order published in the Gazette, shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(3) The registrar for any proclaimed place not referred to in subsection (2) shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at that place, or if there is no such person, shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at some other place specified for the purposes of this subsection by the Minister by order published in the Gazette.

Consent orders.

20. Except where otherwise expressly provided by this Act or the rules, the registrar for the proper place in relation to any proceedings may exercise the power of the Court to make any order in the proceedings which the Court may make, being an order consented to—

(a) by the parties to the application for the order; and

(b) by any other persons who will be required to comply with the order or to suffer anything to be done under the order.

21.

Powers of the registrar for Sydney.

21. (1) The registrar for Sydney may, except where a Judge otherwise orders or the rules otherwise provide, exercise, in or in respect of proceedings in relation to which the proper place is Sydney—

(a) the powers of the Court under section 68 (2); and

(b) the powers of the Court to make—

(i) orders for substituted service of process;

(ii) orders in respect of the joinder, misjoinder and nonjoinder of parties;

(iii) orders in respect of the amendment of documents;

(iv) orders that the trial of proceedings be expedited; and

(v) orders that proceedings be heard together.

(2) The registrar for Sydney shall have, and may exercise concurrently with the registrar for any other proclaimed place specified for the purposes of this subsection by the Governor by order published in the Gazette, such of the powers, authorities, duties and functions of the registrar for that other proclaimed place as may be so specified.

(3) Any power, authority, duty or function conferred upon the registrar for Sydney by this section is additional to those otherwise conferred upon him.

Assistant registrars.

22. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint one or more assistant registrars for a proclaimed place.

(2) If the Governor by proclamation so directs, the person for the time being holding office as, or discharging the functions of, clerk of petty sessions for a place specified in the proclamation (whether or not that place is a proclaimed place) shall be an assistant registrar for the proclaimed place specified in the proclamation.

23.

23. (1) An assistant registrar for a proclaimed place shall have and may exercise and discharge such of the powers, authorities, duties and functions of the registrar for that place as may be specified in the rules for the purposes of this subsection. Powers, etc., of assistant registrars.

(2) Any thing done or omitted to be done by an assistant registrar for a proclaimed place in the exercise or discharge of his powers, authorities, duties and functions under this Act shall, for the purposes of this Act, have the same effect as if it had been done or omitted by the registrar for that proclaimed place.

(3) Nothing in this section affects the powers, authorities, duties and functions of any registrar.

24. A registrar or an assistant registrar shall not be appointed or act as a bailiff or assistant bailiff. Registrar not to act as bailiff.

Subdivision 2.—*Bailiffs.*

25. (1) There shall be at least one bailiff of the Court for each proclaimed place. Bailiffs.

(2) If the Governor by proclamation so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place specified in the proclamation shall be a bailiff of the Court for such proclaimed place or proclaimed places as may be specified in the proclamation.

(3) The Chief Judge may, whether or not there is a bailiff for a proclaimed place by virtue of subsection (2), by order in writing appoint persons to be bailiffs of the Court for that proclaimed place.

Assistant bailiffs.

26. (1) A bailiff for a proclaimed place may, by instrument in writing, appoint a sufficient number of persons to be assistant bailiffs of the Court for that proclaimed place.

(2) An assistant bailiff may be dismissed or suspended from office as such by the Chief Judge or any successor of the bailiff who appointed him, as well as by that bailiff.

Duties of bailiffs and assistant bailiffs.

27. (1) A bailiff for a proclaimed place shall, if required by the Judge presiding thereat to do so, attend any sitting of the Court at that place.

(2) The bailiff for a proclaimed place shall, if required by the registrar for that place to do so—

(a) execute any warrant or writ issued out of the Court; or

(b) serve any other document,

whether or not that place is the proper place in relation to the proceedings to which that warrant, writ or other document relates, but where there are two or more bailiffs for that place, the warrant, writ or other document may be executed or served by any one of them.

(3) It shall be the duty of an assistant bailiff for a proclaimed place to assist the bailiff for that place, as directed by the bailiff.

(4) The bailiffs and assistant bailiffs shall in the execution of their duties conform to the rules and, subject to the rules, to the order and direction of any Judge.

(5) A bailiff who undertakes, or is required to undertake, the execution or service of any warrant, writ or other document shall, in respect thereof, be responsible to any party for all the acts and defaults of himself and of any assistant bailiff assisting him in like manner as the sheriff is responsible for the acts and defaults of himself and his officers.

28. (1) A bailiff appointed under section 25 (3) shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by a bailiff. Remuneration of bailiffs and assistant bailiffs.

(2) An assistant bailiff shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by an assistant bailiff.

29. A bailiff or assistant bailiff shall not be appointed or act as a registrar or assistant registrar. Bailiff not to act as registrar.

30. A person shall not assault, resist, interrupt or obstruct a bailiff or assistant bailiff in the exercise of any of his powers, authorities, duties or functions under this Act, or rescue or attempt to rescue any property seized or taken by a bailiff or assistant bailiff. Obstructing bailiffs.

Penalty : $200 or imprisonment for six months, or both.

Subdivision 3.—*Sittings of the Court.*

31. (1) In this section, "place" means city, town or other place. Proclaimed places.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its civil jurisdiction, and one of those proclaimed places shall be Sydney.

32.

32. (1) In this section, "year" means any period of twelve months ending on the thirty-first day of December. Directions as to sittings at proclaimed places.

(2) The Governor may, if in his opinion it is expedient to do so, by proclamation, direct that the Court shall, during a specified year, sit in its civil jurisdiction at a specified proclaimed place at specified times.

(3) Where there is no direction under subsection (2) that the Court shall, during a particular year, sit at a particular proclaimed place, the Chief Judge may, if in his opinion it is expedient to do so, by order in writing—

(a) direct that the Court shall, during that year, sit in its civil jurisdiction at that place at specified times; or

(b) direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place shall be continued by the Court sitting at some other proclaimed place specified in the order,

and, while a direction under paragraph (b) remains in force, the proceedings to which it relates shall, if continued, be continued accordingly.

(4) A direction under subsection (2) or (3) may be given in respect of a particular year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

(5) Where a direction is given under subsection (2) having effect, during a particular year, in respect of a particular proclaimed place, a previous direction—

(a) under subsection (3) (a) having effect, during that year, in respect of that proclaimed place; or

(b) under subsection (3) (b) having effect, during that year, in respect of proceedings the proper place in relation to which is that proclaimed place,

shall cease to have effect.

General provisions as to sittings.

33. (1) Subject to this Part, sittings of the Court shall be arranged by the Chief Judge.

(2) Subject to this Part—

(a) the Court may sit simultaneously at different proclaimed places;

(b) a Judge shall preside at such sittings of the Court at such proclaimed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court at the one proclaimed place.

(3) Where a sitting of the Court is directed to be held at a proclaimed place at a time specified under section 32, the registrar for that place shall—

(a) if the Chief Judge so directs; or

(b) if for any reason it is not practicable to be held at that time,

adjourn the sitting to such time as the Chief Judge nominates or, if the Chief Judge does not nominate a time, to such time as the registrar deems convenient.

Permanent substitution of proclaimed place.

34. (1) Where a place ceases to be a proclaimed place by reason of the revocation or amendment of a proclamation made under section 31, the Governor may, by proclamation, direct that—

(a) all proceedings (including proceedings before a registrar or any other officer of the Court) pending before the Court at that place; and

(b) any unsatisfied judgment or order of the Court in proceedings the proper place in relation to which was that place,

may be continued or enforced by the Court sitting at such other place as may be specified in the proclamation, and the proceedings shall, if continued, be continued accordingly or the judgment or order enforced accordingly, as the case may require.

(2) The Governor may, in any such proclamation, direct that the records of the Court at the place that has so ceased to be a proclaimed place shall be removed at or within a time stated in the proclamation to the registry for the other place specified therein.

(3) A direction under subsection (1) shall, for the purposes of the definition of "proper place" in section 4 (1), have effect as if it were an order for a change of venue under section 40 in respect of the proceedings to which it relates to the other place specified in the proclamation.

Temporary substitution of proclaimed place.

35. Where the Governor is of the opinion that it is inexpedient or impracticable for the Court to sit at a proclaimed place but that that place should continue to be specified in a proclamation under section 31, he may, by proclamation, direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place may be continued by the Court sitting at such other place as may be specified in the proclamation, and, while the direction remains in force, the proceedings shall, if continued, be continued accordingly.

Adjournment to another proclaimed place.

36. Where all parties appearing in proceedings the hearing of which has commenced before him in court consent, a Judge may direct that those proceedings be continued before him at another proclaimed place at which he is, under section 33 (2) (b), authorised to sit.

Chambers.

37. A Judge may make in chambers any order in respect of any proceedings which he could lawfully make in court and which he considers may be properly made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere.

Reservation of judgment or decision.

38. (1) Where in any proceedings a Judge reserves his judgment or his decision on any question of fact or law, he may—

(a) give his judgment or decision at the proper place in relation to those proceedings or at any other place at which he is authorised by this Act to hear or dispose of those proceedings, at any time, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a); or

(b) draw up in writing his judgment or decision, sign it and forward it to the registrar for that proper place.

(2) Where a registrar receives a judgment or decision forwarded to him under subsection (1) (b), he shall, after giving notice to the parties to the proceedings, read the judgment or decision at the place for which he is registrar at a convenient time specified in the notice, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a).

(3) A judgment or decision given by a Judge under subsection (1) (a) or read by a registrar under subsection (2) shall take effect on the day on which it is so given or read and shall be as valid as if given by the Judge at the hearing of the proceedings to which the judgment or decision relates.

39. Nothing contained in or done under section 32, 35, 36 or 37 has, for the purposes of the definition of "proper place" in section 4 (1), effect as a change of venue, unless the Court orders a change of venue under section 40. Proper place not affected.

Subdivision 4.—Change of venue.

40. (1) Where— Change of venue.

(a) it appears that a fair or unprejudiced trial of any issue cannot otherwise be had; or

(b) for any other reason it appears expedient to the Court to do so,

the Court may, on terms, change the venue of any proceedings.

(2) Where the venue of any proceedings is changed, the registrar for the proclaimed place from which the venue is changed shall forthwith deliver or transmit by post the whole record of the proceedings to the registrar for the proclaimed place to which the venue is changed.

Subdivision 5.—Parties.

41. (1) Subject to this Act and the rules, where a plaintiff has a cause of action against two or more persons having a joint liability, it shall be sufficient if any one or more of those persons is or are served with process in any proceedings, and judgment in the proceedings may be given or entered up and enforced against the person or persons so served notwithstanding that others jointly liable have not been served or sued, or are not within New South Wales. Joint liability.

(2) The provisions of section 97 of the Supreme Court Act, 1970, apply to and in respect of a judgment given or entered up in proceedings in the Court in the same way as they apply to and in respect of a judgment given in proceedings in the Supreme Court.

42.

42. An executor or administrator may sue or be sued in any proceedings in like manner as if he were a party suing or being sued in his own right, and judgment in the proceedings and enforcement of the judgment shall be as prescribed. Executors and administrators.

Subdivision 6.—Right of appearance.

43. (1) A party to any proceedings may appear— Right of appearance.

(a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained; or

(b) if no barrister or solicitor is so retained and—

(i) if that party is a natural person—by himself; or

(ii) if that party is a corporation—by an officer of the corporation authorised in that behalf by the corporation in accordance with the rules,

or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.

(2) A person appearing in any proceedings may address the Court and examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in the Court or before a registrar.

(4) Subsection (3) does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(5)

(5) No amount paid to a person who appears in any proceedings, and who is not a barrister or solicitor retained as mentioned in subsection (1), shall be allowed as costs between party and party.

(6) Subsection (2) has effect subject to this Act and the rules and to any direction given by the Court under section 156 (2).

DIVISION 2.—*Actions: Jurisdiction.*

Subdivision 1.—*General jurisdiction in relation to actions.*

44. (1) Subject to this Act, the Court shall have jurisdiction to hear and dispose of— Actions.

(a) any personal action at law where the amount claimed does not exceed $10,000, whether on a balance of account or after an admitted set-off or otherwise; or

(b) any action brought to recover an amount not exceeding $10,000, 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.

(2) Without affecting the generality of the provisions of subsection (1) (a), a reference in those provisions to a personal action at law includes a reference to an action for the detention of goods.

(3)

(3) For the purposes of subsection (1) (a), the amount claimed in an action for the detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.

Minors.

45. A minor to whom any wages or other sum arising out of the course of his employment are or is alleged to be due may sue for and recover the wages or sum in the Court in the same manner as if he were of full age.

Ancillary equitable relief: injunctions.

46. (1) Without affecting the generality of Division 8, the Court shall, in any action, have power to grant any injunction (whether interlocutory or otherwise) which the Supreme Court might have granted if the action were proceedings in the Supreme Court.

(2) In relation to the power of the Court to grant an injunction under this section—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c) shall, subject to the rules, extend to the enforcement of any order of the Court made in connection with proceedings for the grant of the injunction.

(3) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of an injunction under this section; and

(b) any other matter necessary or convenient for giving effect to this section.

Cause of action or defendant outside the State.

47. (1) The Court shall have jurisdiction in accordance with this Act to hear and dispose of an action—

(a) notwithstanding that part of the cause of action arose outside New South Wales, provided a material part of the cause of action arose within New South Wales;

(b) notwithstanding that the whole cause of action arose outside New South Wales, provided the defendant was resident within New South Wales at the time of service of the statement of claim in the action; or

(c) notwithstanding that the defendant is not within New South Wales, provided the whole cause of action or a material part of the cause of action arose within New South Wales and provided the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended) at the time of service of the statement of claim in the action.

(2) Subsection (1) (c) applies whether the defendant has or has not ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, where there are two or more defendants, any one of those defendants.

48. (1) An action in which the amount claimed does not exceed $20 and which could have been commenced in a court of petty sessions shall not be commenced in the Court except with the leave of the Court, which leave may be given on terms. Miscellaneous limitations on jurisdiction.

(2) Subject to subsection (3), the Court shall not have jurisdiction in an action in which title to land the value of which is more than $10,000 is in question.

(3) If the title to land the value of which is more than $10,000 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

of the Court shall not be evidence of title between the parties or their privies in other proceedings in the Court or in any proceedings in any other court.

(4) Without affecting Division 8, the Court shall not have jurisdiction in actions for possession of land by virtue of this Part.

Subdivision 2.—Splitting and dividing of causes of action and abandonment.

49. (1) Where a person splits or divides any cause of action against another person— Actions not to be split or divided.

(a) so as to bring an action for part of the amount for which an action may be brought on that cause; or

(b) so as to plead a cross-claim for part of the amount for which an action may be brought on that cause,

and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action brought or cross-claim pleaded on that cause (whether brought or pleaded in the Court or brought, taken or pleaded in any other court).

(2) Where a person has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another person, whether or not the amount of that claim exceeds $10,000, that other person may, notwithstanding the provisions of subsection (1) but subject to any other provision of this Act, bring an action on, or plead by way of cross-claim in the Court, each of those securities as if each of them formed a distinct cause of action.

50. A plaintiff who has a cause of action for more than $10,000 may abandon the excess by stating the abandonment in the statement of claim by the lodging of which an action is commenced on that cause of action, and where the abandonment is so stated— Abandonment.

(a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his case, recover to an amount not exceeding $10,000;

(b) judgment in the action shall be in full discharge of all demands in respect of that cause of action; and

(c) entry of the judgment in the records of the Court shall be made accordingly.

Subdivision 3.—*Jurisdiction by consent.*

51. (1) In this section, "memorandum of consent", in relation to an action, means a document signed— Consent jurisdiction.

(a) where there is only one defendant in the action—by the defendant or his solicitor; or

(b) where there are two or more defendants in the action—by each defendant or his solicitor,

in which it is stated that the defendant, or each of the defendants, consents to the action being tried in the Court and is aware that, unless the memorandum is filed in accordance with subsection (2), the Court will not have jurisdiction to hear and dispose of the action.

(2) Where, but for this subsection, the Court would not have jurisdiction to hear and dispose of an action by reason only of the fact that the amount claimed exceeds $10,000, the Court shall have jurisdiction to hear and dispose

of

of that action if, together with the statement of claim by the lodging of which the action is commenced, the plaintiff files a memorandum of consent in respect of the action.

DIVISION 3.—*Actions: Procedure.*

Subdivision 1.—*General.*

Actions to be heard at proper place.

52. Except where otherwise expressly provided by or under this Act, an action and any proceedings ancillary to that action shall be heard and disposed of by the Court sitting at the proper place in relation to that action.

Subdivision 2.—*Commencement of actions.*

Manner of commencement of actions.

53. (1) An action shall be commenced by the lodging by the plaintiff with a registrar—

(a) except in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim; or

(b) in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim or a statement of liquidated claim,

for issue by the registrar.

(2) Proceedings ancillary to an action shall be commenced in the prescribed manner.

Place of commencement of action.

54. An action may be commenced at any proclaimed place.

55.

55. (1) In this section— Relevant places.

"defendant" includes, where there are two or more defendants, any one of those defendants;

"relevant place", in relation to an action, means each of the following places :—

(a) the place where the defendant is resident;

(b) the place where the defendant carries on his business; and

(c) the place where the cause of action arose,

but does not include any place outside New South Wales.

(2) Where the proclaimed place at which an action is commenced is not the nearest proclaimed place to a relevant place, the defendant may, if he files the notice of the grounds of his defence under section 56 within the time prescribed for the purposes of this subsection, file within that time an affidavit by the defendant or his solicitor or agent specifying all the relevant places and the nearest proclaimed place to each of them.

(3) Where the defendant files the notice of the grounds of his defence and an affidavit in accordance with subsection (2), the plaintiff may, within the time prescribed for the purposes of this subsection, file—

(a) a notice, signed by the plaintiff or his solicitor or agent, selecting as the venue of the action one of the proclaimed places specified in the defendant's affidavit; or

(b) an affidavit by the plaintiff or his solicitor or agent stating that a notice under paragraph (a) is not filed on the ground that—

(i) the proclaimed place at which the action was commenced is the nearest proclaimed place to a relevant place;

(ii) at least one of the places specified as relevant places in the affidavit under subsection (2) is not a relevant place;

(iii) not all of the relevant places were specified in the affidavit under subsection (2); or

(iv) the place specified in the affidavit under subsection (2) as being the nearest proclaimed place to a relevant place specified therein is not the nearest proclaimed place,

and if a notice under paragraph (a) or affidavit under paragraph (b) is not so filed, the plaintiff shall, at the expiration of that prescribed time, be deemed to have discontinued his action.

(4) The filing of a notice in accordance with subsection (3) shall have the same effect as if the Court had ordered a change of venue under section 40 to the proclaimed place selected in the notice.

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either order a change of venue under section 40 to such proclaimed place as the Court thinks proper (whether or not that place is a relevant place) or direct that there shall be no such change of venue.

Subdivision 3.—*Defences.*

Defences.

56. (1) A defendant in an action commenced by the lodging of an ordinary statement of claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor.

(2) A defendant in an action commenced by the lodging of a statement of liquidated claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor, and an affidavit verifying the grounds or verifying such facts as the Court may, in the special circumstances of the case, deem sufficient.

(3) The registrar shall, as soon as practicable after the filing of any notice of grounds of defence under this section, give or send by post a copy of the notice and any affidavit filed with it to the plaintiff or his solicitor.

(4) A defendant shall not at the trial of an action, except by consent of the plaintiff or by leave, given on terms, of the Court, set up any ground of defence not included in a notice of grounds of defence filed by him under this section.

(5) A defendant shall not, by reason of having filed a notice of the grounds of his defence to an action, be deemed to have waived any objection he may have on the ground of want of jurisdiction in the Court to try the action.

Subdivision 4.—*Order for judgment and judgment by default.*

Order for judgment.

57. (1) Where, in an action commenced by the lodging of an ordinary statement of claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (1); and

(b) judgment has not been given or entered up in the action,

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing an affidavit of service of the statement of claim on that defendant, have an order, to be called an order for judgment, made by the Court or the registrar against that defendant.

(2)

(2) Subject to subsection (4), where an order for judgment is made in an action against a defendant—

(a) that defendant shall be deemed to have admitted liability; and

(b) the action shall go to trial only as to the assessment of the amount to be recovered by the plaintiff.

(3) An order for judgment—

(a) may be set aside, on terms, by order of the Court at any time before judgment; and

(b) shall, without order, be set aside on the filing of a notice of grounds of defence under section 56 (1) in the action in which the order for judgment was made.

(4) Subsection (2) shall, on the setting aside of an order for judgment in accordance with subsection (3), cease to have any operation upon or in respect of the action in which the order for judgment was made.

(5) Where an order for judgment is set aside, the Court may, at the same time or subsequently, make such orders as it thinks fit as to the continuance of the action and as to the costs incurred by any party by the making or setting aside of the order for judgment or by any adjournment of the hearing of the action.

Default judgment.

58. (1) Where, in an action commenced by the lodging of a statement of liquidated claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (2); and

(b) judgment has not been entered up in the action,

the

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing—

(c) an affidavit of service of the statement of claim on that defendant; and

(d) a statement of—

(i) the amount then due to the plaintiff in respect of the cause of action for which the action was commenced; and

(ii) any payments made or credits accrued since the commencement of the action in reduction of the amount of the plaintiff's claim or costs,

verified by the oath of the plaintiff, or his solicitor or agent,

have default judgment entered up by the Court or the registrar against that defendant for the amount referred to in paragraph (d) (i) or the amount specified in the statement of claim (whichever is the lesser), and such amount (if any) as may, for the purposes of this subsection, be prescribed as costs.

(2) A default judgment under this section may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

Subdivision 5.—Judgment by confession or agreement.

59. In this Subdivision— Interpretation: Pt. III, Div. 3, Subdiv. 5.

"defendant", in relation to an action—

(a) in which there is only one defendant—means the defendant; or

(b) in which there are two or more defendants —means all or any of the defendants;

"plaintiff",

"plaintiff", in relation to an action—

(a) in which there is only one plaintiff—means the plaintiff; or

(b) in which there are two or more plaintiffs—means all the plaintiffs.

Judgment by confession.

60. (1) At any time before judgment in an action, the defendant may sign a statement confessing to the amount, or part of the amount, of the claim of the plaintiff and may specify in that statement by what instalments payable at what times the defendant is prepared to pay the amount so confessed to.

(2) Where a statement under subsection (1) is filed before judgment, the registrar shall as soon as practicable thereafter give or send by post to the plaintiff or his solicitor notice of the amount to which the defendant has confessed and of any terms of payment specified by the defendant in that statement.

(3) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has not in the action claimed damages in respect of any personal injuries, the registrar shall forthwith after giving or sending the notice under subsection (2)—

(a) enter up judgment for the plaintiff for that amount; and

(b) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(4)

(4) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has in the action claimed damages in respect of any personal injuries and the plaintiff within the prescribed time—

(a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

(ii) make application to the Supreme Court for an order under section 145 removing the action into the Supreme Court and give notice to the registrar that he has so applied; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(5) Where the confession is to part only of the amount of the claim of the plaintiff and the plaintiff within the prescribed time—

(a) does not file a notice refusing to accept in full satisfaction of his claim the amount so confessed to; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(6) An order made under subsection (3) (b), (4) (d) or (5) (d) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

(7) Where within the prescribed time the plaintiff does not—

(a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to; or

(b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of any personal injuries—make an application as referred to in subsection (4) (a) (i), or make an application and give notice, as referred to in subsection (4) (a) (ii),

but files a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall forthwith enter up judgment for the plaintiff for the amount to which the defendant has confessed and—

(c) the registrar shall be deemed to have made an order under section 88 (4) that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

(d) the plaintiff's notice of refusal shall be deemed to be a notice of objection under section 88 (5).

(8)

(8) Where the plaintiff makes application, on the ground that he did not receive in sufficient time any notice required to be forwarded to him by the registrar under subsection (2), for the setting aside of any judgment entered up by the registrar under subsection (4) (c) or (5) (c) or any order made by the registrar under subsection (3) (b), (4) (d) or (5) (d), the Court may, if it thinks fit, set aside, on terms, the judgment or order.

(9) Where, within the prescribed time referred to in subsection (4), the plaintiff makes an application as referred to in subsection (4) (a) (i) or makes an application and gives notice, as referred to in subsection (4) (a) (ii), and the application is refused—

(a) the provisions of subsections (4) and (7) shall apply as if the application had not been made; and

(b) where the time at which the registrar is, in accordance with the rules, notified of the refusal is later than that prescribed time, the provisions of subsection (4) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.

Judgment by agreement.

61. (1) At any time before judgment in an action—

(a) where there are parties joined otherwise than as plaintiff or defendant—

(i) all the parties; or

(ii) the plaintiff and the defendant; or

(b) where there are no parties joined otherwise than as plaintiff or defendant—the plaintiff and the defendant,

may enter into an agreement as to the judgment to be entered in the action as between the parties to the agreement and as to the terms and conditions (if any) upon which the judgment is to be satisfied.

(2)

(2) Where an agreement under subsection (1) is filed before judgment, the registrar shall forthwith enter up judgment in accordance with that agreement.

(3) Where—

(a) the registrar enters up a judgment under subsection (2);

(b) a judgment debt arises by virtue of the judgment; and

(c) the agreement specifies by what instalments payable at what times the judgment debt or part thereof is to be paid,

the registrar shall forthwith order that the judgment debt or part be paid by such instalments payable at such times as are so specified.

(4) An order made under subsection (3) shall be deemed to be an order made under section 88 (4) pursuant to an agreement referred to in section 88 (1) (b).

(5) A judgment entered up under subsection (2) pursuant to an agreement under subsection (1) may be set aside, on terms, by the Court on sufficient cause being shown on the application of any party to the action who was not a party to that agreement.

Machinery as to statements of confession and agreements.

62. (1) A statement under section 60 (1) may, instead of being signed by the defendant, be signed by his solicitor or barrister on his behalf.

(2) An agreement under section 61 (1) may, instead of being entered into personally by a party to the action, be entered into by his solicitor or barrister on his behalf.

(3)

(3) A statement under section 60 (1) or an agreement under section 61 (1) shall have no force or effect for the purposes of this Subdivision unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) A judgment entered up—

(a) under section 60 pursuant to a statement under section 60 (1) shall, as between the plaintiff and the defendant signing the statement; or

(b) under section 61 pursuant to an agreement under section 61 (1) shall, as between the parties to the agreement,

be in full discharge of all demands in respect of the cause of action in respect of which the statement was signed or the agreement was entered into.

Subdivision 6.—Arbitration.

Arbitration.

63. (1) The Court at any time may, with the consent of all the parties to an action, order, on terms, that the action be referred to an arbitrator.

(2) An award made by an arbitrator in an action referred to arbitration under subsection (1) shall, as soon as practicable, be—

(a) communicated by the arbitrator to the registrar; and

(b) entered by the registrar as the judgment of the Court in the action.

(3) A judgment entered under subsection (2) (b) shall, subject to subsection (4), be as binding and effectual for all purposes as if given by the Court.

(4)

(4) The Court, on application made to it by any party within the prescribed time, may set aside an award referred to in subsection (2) and any judgment entered under subsection (2) (b) in consequence of the award, and may—

(a) refer the award back to the arbitrator who made it; or

(b) revoke the reference to the arbitrator who made the award and make such order as it thinks fit for the continuance of the action.

Subdivision 7.—Witnesses, evidence and ancillary matters.

Subpoenas.

64. (1) On request by a party to an action, the registrar for any proclaimed place (whether or not that place is the proper place in relation to the action) shall, subject to the rules, issue—

(a) a subpoena to give evidence, requiring a person specified therein to attend and give evidence at any hearing of the action or of proceedings ancillary to the action, as directed by the subpoena; or

(b) a subpoena for production, requiring a person specified therein to attend and produce, for the purpose of evidence, at any hearing of the action or of proceedings ancillary to the action any document or thing that is in his possession or control and specified in the subpoena, as directed by the subpoena.

(2) The rules may make provision for or with respect to authorising compliance with a subpoena for production issued in respect of a document or thing by the production of the document or thing to a registrar.

(3)

(3) A person—

(a) who is duly served with a subpoena issued under subsection (1);

(b) to whom at the time of service of the subpoena, or not later than a reasonable time before the day on which his attendance is required by the subpoena, tender is made of an amount in respect of the expenses of complying with the requirements of the subpoena, determined in accordance with the rules; and

(c) who, without reasonable excuse, fails to comply with the subpoena,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or produce the document or thing.

Evidence and production by persons present.

65. A person who is present at the hearing of an action or of proceedings ancillary to an action and who, having been required by the Court but not by a subpoena to do so, refuses without reasonable excuse—

(a) to give evidence; or

(b) to produce a document or thing then in his possession,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or to produce the document or thing.

Fines under section 64 or 65.

66. (1) A fine imposed under section 64 or 65 is payable to the registrar.

(2)

(2) Payment of a fine imposed under section 64 or 65 may, if the Court so orders, be enforced, subject to the rules, as if the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the registrar were a judgment creditor.

(3) The amount of any fine paid to or recovered by the registrar under this section shall be applied in such proportions as the Court thinks fit—

(a) towards compensating any party to the action who is injured by failure to comply with the requirements of the subpoena or the Court in respect of which the fine was imposed; and

(b) to the Consolidated Revenue Fund.

Bringing up a prisoner to give evidence.

67. (1) A Judge (whether or not sitting at a proclaimed place), on application made in the prescribed manner by a party to an action, may if he thinks fit issue an order under the seal of the Court for bringing up before the Court any person confined in any prison or place under any sentence, under commitment for trial, or for any other reason, to be examined as a witness in the action, and for returning him to confinement.

(2) The person having the custody of a person in respect of whom an order is made under subsection (1) shall not be bound to comply with the order unless tender is made to him of an amount sufficient to cover the reasonable expenses involved in complying with the order.

Matters ancillary to trial.

68. (1) The rules may make provision for or with respect to—

(a) empowering a party to an action to give another party a notice requiring that other party to do all or any of the following things:—

(i) to give discovery of documents;

(ii)

(ii) to produce documents for inspection;

(iii) to produce documents at the hearing of the action;

(iv) to attend for a medical examination; or

(v) to make admissions for the purposes of the action;

(b) the manner of compliance with such a requirement; and

(c) empowering the Court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) The Court may, subject to and in accordance with the rules, order, on terms, that—

(a) a natural person, or a corporation through any of its officers, attend for examination before the Court, or attend and produce documents, for the purpose of ascertaining or assisting in the ascertainment of the identity of, and the name and place of residence of, and other particulars relating to, a person against whom an action may be brought;

(b) a party give discovery of documents to any party;

(c) a party produce documents for inspection by any party;

(d) a party produce documents at the hearing of any action;

(e) a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any action;

(f) the evidence of a witness be allowed to be taken on an examination before the hearing of an action;

(g) a party attend for a medical examination; or

(h) a party give further particulars of any statement of claim lodged, grounds of defence filed, or cross-claim pleaded by him,

and may make such further order as may be prescribed in the event of any failure by a person to comply with its order.

Informal proof; admissions. No. 52, 1970, s. 82.

69. (1) The Court may at any stage of any action—

(a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, and with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and

(b) require any party to the action, not being a minor or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in case of refusal or neglect to make the admissions may, unless the Court is of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

(2) An admission made as required by the Court under subsection (1) (b)—

(a) shall be for the purpose of the action in which it is made and for no other purpose;

(b) shall be subject to all just exceptions; and

(c) may, with the leave of the Court, given on terms, be amended or withdrawn.

70.

Examination on oath. No. 52, 1970, s. 83.

70. Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person for the purposes of an action—

(a) the examination shall be taken on oath; and

(b) the oath shall be administered by the person taking the examination or by a Judge.

Subdivision 8.—*Trial and jury.*

Setting down for trial.

71. Subject to this Act and the rules, an action in which a notice of grounds of defence is filed under section 56 or in which an order for judgment is made under section 57, shall be set down for trial in accordance with the rules.

Action called on for trial.

72. (1) Subject to this Act, where an action that has been set down for trial is called on for trial—

(a) if the plaintiff and a defendant appear, the Court may proceed to hear and dispose of the action as against that defendant; or

(b) if the plaintiff does, but a defendant does not, appear, the Court may proceed to the trial of the action against that defendant on the part of the plaintiff only.

(2) Where the Court proceeds to the trial of the action on the part of the plaintiff only, as referred to in subsection (1) (b), its judgment—

(a) may, on sufficient cause being shown, be set aside by order of the Court on terms; and

(b)

(b) shall, if not set aside, be as final and conclusive between the parties to the action as if both parties had appeared.

Striking out of action.

73. (1) The Court may, if it thinks fit, strike out an action at any time on terms, and without affecting the generality of the foregoing provisions of this subsection, the Court may so strike out an action if—

(a) no party appears; or

(b) a defendant does, but the plaintiff does not, appear.

(2) Where an action is struck out under subsection (1), the Court may, on the application of any party, order that the action be restored on terms, and without affecting the generality of the foregoing provisions of this subsection, that action may be so restored upon such terms and conditions as to costs, the staying of the action until payment of costs, and the priority of the hearing of the action as the Court thinks fit.

Conduct of the trial.

74. Subject to any direction given by the Court under section 156 (2), the order of evidence and addresses and conduct of the trial in respect of any action shall be in accordance with the rules.

Nonsuit.

75. The Court, at the trial of an action, may, in the prescribed circumstances, order a nonsuit where satisfactory proof is not given entitling the plaintiff to the judgment of the Court.

76. Where in an action a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at— Verdict exceeding $10,000.

(a) an amount in excess of $10,000 but not in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the full amount of the verdict; or

(ii) the total amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be; or

(b) an amount in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the amount of $15,000; or

(ii) the amount of $15,000 reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

77. (1) In an action the Judge shall determine all questions of law. Questions of fact and law.

(2) In an action the Judge shall, subject to subsection (5), determine all questions of fact unless a jury has been summoned.

(3)

(3) Subject to sections 78 and 79, an action shall be tried without a jury unless the Court makes an order (which may be made on terms) to the contrary.

(4) The Court may order that any question of fact in an action be tried before any other question of fact in the action.

(5) In an action, where a jury has been summoned—

(a) the Court may order that all or any issues of fact be tried without the jury if—

(i) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury; or

(ii) all parties consent to the order; and

(b) issues of fact on a defence arising under section 63 (5) or 64 (1) (c) of the Workers' Compensation Act, 1926, shall be tried without the jury.

Where jury may be summoned.

78. (1) In any action (other than an action to which section 79 applies), where the amount claimed exceeds $100, any party may, within the prescribed time, by filing a requisition for trial with a jury and paying the fee prescribed by the regulations made under section 150 require that a jury be summoned to try the action, and a jury shall be so summoned.

(2) Where the Court makes an order under section 77 (3) or 79 (1), the plaintiff shall pay the fee prescribed by the regulations made under section 150 and shall not be entitled to take any further step in the action until the fee is paid.

(3) The fee paid under subsection (1) or (2) shall be treated as costs in the action, unless the Court otherwise orders.

79.

Running down cases. No. 52, 1970, s. 87.

79. (1) In any action to which this section applies, the Court may, on the application of any party, and shall, on the application of all parties, make an order (which may be made on terms) that the action be tried with a jury.

(2) Subject to subsection (4), this section applies to any action in which—

(a) damages are claimed in respect of—

(i) the death of or bodily injury to any person and the claim is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street;

(ii) damage to property caused by or arising out of the use of a motor vehicle; or

(iii) any other matter in which the liability incurred is caused by or arises out of the use of a motor vehicle; or

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a).

(3) In subsection (2)—

"motor vehicle" means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

"public street" means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

(4)

(4) This section does not apply to an action for damages in respect of the death of or bodily injury to any person where the action is based upon an act, neglect or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff.

80. It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial of an action. Special verdict. No. 52, 1970, s. 90.

Subdivision 9.—Judgments and orders.

81. Subject to this or any other Act, a judgment in an action shall, unless set aside in accordance with this Act, be final and conclusive between the parties to the action. Judgment final.

82. (1) A judgment or order of the Court in an action may, on sufficient cause being shown, be set aside, on terms, by order of the Court, if the judgment was given or entered up, or the order was made, irregularly, illegally or against good faith. Setting aside of judgment or order.

(2) Subsection (1) does not apply to an irregularity arising by virtue of a failure to which section 159 applies.

(3) A judgment or order of the Court in an action may, on terms, be set aside by order of the Court if the parties to the action consent.

83.

83. (1) The judgment in an action for the detention of goods, if for the plaintiff, shall be for an amount comprising— Judgment in detinue.

(a) the value of the goods, as determined by the Court; and

(b) damages (if any) awarded for the detention of the goods.

(2) The rules may make provision for or with respect to the circumstances in which the judgment debt in an action for the detention of goods shall be deemed to be satisfied, to the extent of the value of the goods, by the delivery of the goods to the plaintiff.

DIVISION 4.—*Actions: Enforcement of Judgments.*

Subdivision 1.—*General.*

84. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: Pt. III, Div. 4.

"judgment" includes any order of the Court for the payment of an amount of money as costs or otherwise;

"judgment debt" includes—

(a) any amount ordered by the Court to be paid as costs or otherwise; and

(b) any amount payable under section 120 as costs without any order of the Court.

(2) A reference in this Division to the giving of a judgment includes a reference to the making by the Court of an order for the payment of an amount of money as costs or otherwise.

85.

Interest on judgment debt.

85. (1) Unless the Court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

(a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as the Court in any particular case fixes;

(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act, 1970; and

(c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Notwithstanding subsection (1) or (2), where—

(a) the amount of a judgment debt (excluding the amount of costs to be ascertained by taxation or otherwise) is paid in full within twenty-one days after the judgment debt becomes payable; or

(b) the amount of costs ascertained by taxation or otherwise is paid in full within twenty-one days after that amount is so ascertained,

interest shall, unless the Court otherwise orders in any particular case, not be payable on the amount so paid.

Setting off of judgments.

86. (1) Where the judgment debtor in respect of an action (in this section referred to as "the first action") recovers judgment in his favour in another action (in this section referred to as "the second action") against his

judgment

judgment creditor, the judgment debtor may apply to the Court sitting at the proper place for either of those actions for an order that the judgment against him be set off against the judgment in his favour.

(2) Where an order is made under subsection (1) and—

(a) the amount of the judgment debt in the first action is less than or equal to the amount of the judgment debt in the second action, the judgment in the first action shall be deemed to be satisfied, and the amount of the judgment debt in the second action shall be reduced by the amount of the judgment debt in the first action; or

(b) the amount of the judgment debt in the first action is more than the amount of the judgment debt in the second action, the amount of the judgment debt in the first action shall be reduced by the amount of the judgment debt in the second action, and the judgment in the second action shall be deemed to be satisfied.

Subdivision 2.—Payment of judgment debt.

87. (1) The Court may, on the application of any party to an action or without any such application being made, when giving judgment in the action, order that the judgment debt (if any) be paid at such time, or by such instalments payable at such times, as it thinks fit. Payment of judgment debt generally.

(2) Subject to this Subdivision, every judgment debt shall be payable forthwith.

(3) Subject to subsection (4), the amount of every judgment debt arising from an action, whether payable in one sum or by instalments, shall be payable to the registrar.

(4)

(4) Notwithstanding subsection (3), any payment by or on behalf of a judgment debtor made on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, operate to reduce the judgment debt by the amount of the payment.

(5) Where the Court makes an order under subsection (1), the order shall, while it remains in force, operate as a stay of enforcement of the judgment.

(6) Where a judgment creditor files an affidavit for the purpose of requiring the issue of any document for or in connection with the enforcement of a judgment, the affidavit shall, in any action (whether in the Court or in any other court) by the judgment debtor against the registrar for the wrongful issue of the document, be conclusive evidence in favour of the registrar that at the time of the issue of the document—

(a) where an amount is stated in the affidavit as having been paid in reduction of the judgment debt—that amount and no other amount had been paid; or

(b) where there is a statement in the affidavit that no amount has been paid in reduction of the judgment debt—no amount had been paid,

by or on behalf of the judgment debtor in reduction of the judgment debt.

Order for instalments subsequently.

88. (1) Whether or not an order in respect of a judgment debt has been made under section 87 (1)—

(a) the judgment debtor may make an application in writing, supported by an affidavit as to his property and means, to the registrar for leave to pay the judgment debt, or the balance of the judgment debt

then

then owing to the judgment creditor, by such instalments payable at such times as may be specified in the application; or

(b) the judgment creditor and the judgment debtor may enter into an agreement specifying the amount agreed to be then owing to the judgment creditor, and may in that agreement specify by what instalments payable at what times that amount is to be paid.

(2) An agreement under subsection (1) (b) may, instead of being entered into personally by the judgment creditor or the judgment debtor, be entered into by his solicitor or barrister on his behalf.

(3) An agreement under subsection (1) (b) shall have no force or effect for the purposes of this section unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) Where—

(a) an application is made by a judgment debtor under subsection (1) (a), the registrar shall forthwith consider and determine the application and may—

(i) order that the judgment debt be paid by such instalments payable at such times as are specified in the application; or

(ii) refuse to make such an order; or

(b) an agreement under subsection (1) (b) is filed, the registrar shall forthwith order that the judgment debt be paid by such instalments payable at such times as are specified in the agreement,

and where he makes an order under paragraph (a) or (b) the registrar shall, as soon as practicable thereafter, give or send by post to the judgment creditor and judgment debtor notice of the order.

(5)

(5) Where an order is made by a registrar under subsection (4) pursuant to an application made by the judgment debtor under subsection (1) (a), the judgment creditor may, within the prescribed period after notice of the order was given or sent to him under subsection (4) by the registrar, file notice of his objection to the payment of the judgment debt by the instalments specified in the order.

(6) Where under subsection (4) the registrar refuses to make an order, or where the judgment creditor files with the registrar a notice of objection in accordance with subsection (5), the registrar shall set down the judgment debtor's application for hearing by the Court and shall as soon as practicable thereafter give or send by post to the judgment creditor and the judgment debtor notice of the time and place set down by him for the hearing of the judgment debtor's application, and the Court may, after hearing the judgment debtor and the judgment creditor, or such of them as appears, deal with the application and—

(a) where the registrar refused to make the order—

(i) make an order that the judgment debt, or the balance of the judgment debt then owing to the judgment creditor, be paid by such instalments payable at such times as the Court thinks fit; or

(ii) refuse to make such an order; or

(b) where the judgment creditor has filed such a notice of objection, confirm, vary or rescind the order of the registrar.

(7) Where—

(a) an application is made by a judgment debtor under subsection (1) and no application in respect of the judgment debt has previously been made under that subsection or under section 87 (1); and

(b)

(b) the registrar refuses under subsection (4) to make an order pursuant to the application,

the application shall, until it is dealt with under subsection (6), and unless the Court otherwise orders, operate as a stay of enforcement of the judgment in respect of which the application is made, except enforcement by way of a garnishee order to which section 98 applies made before the application was made to the registrar.

(8) Where the Court or the registrar makes an order under this section, the order shall, while it remains in force, operate as a stay of enforcement of the judgment in respect of which the order was made, except enforcement by way of a garnishee order to which section 98 applies made before the order under this section was made.

(9) An order may be made under this section in respect of a judgment debt, notwithstanding that at the time when the application for the order or the order is made there is in force an order under section 87 (1) or under this section, but where there is in force such an order any subsequent order made under this section in respect of the same judgment debt supersedes the former order.

Miscellaneous provisions as to orders under sections 87 and 88 and applications.

89. (1) Upon an application, supported by affidavit, made by the judgment creditor on the grounds that there has been a substantial increase in the property or means of the judgment debtor, the Court may, if satisfied as to the truth of those grounds, vary or rescind any order under section 87 or 88 in respect of the judgment debt and, where the Court refuses to grant the application, may order the judgment creditor to pay to the judgment debtor such amount as it thinks fit for the expenses of the judgment debtor in attending the Court to oppose the application.

(2)

(2) An order made under section 87 or 88 in respect of a judgment debt shall, subject to the agreement (if any) consequent on the filing of which the order was made under section 88 (4) (b), cease to be in force if the judgment debtor fails to make any payment in accordance with the order, and thereafter the judgment may, except where otherwise directed by the Court or provided in the agreement (if any), be enforced for the balance of the judgment debt owing to the judgment creditor.

Subdivision 3.—*Examination of judgment debtor.*

90. In this Subdivision— Interpretation: Pt. III, Div. 4, Subdiv. 3.

"examination summons" means summons issued under section 91 (1);

"issuing registrar", in relation to an examination summons, means the registrar for the proclaimed place at which the summons was issued;

"presiding registrar" means a registrar before whom a person is required to attend for examination under this Subdivision.

91. (1) Where a judgment debt arising from an action has not been satisfied, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons directed— Examination summons.

(a) where the judgment debtor is not a corporation—to the judgment debtor; or

(b) where the judgment debtor is a corporation—to an officer or former officer of the corporation.

(2)

(2) The examination summons—

(a) shall summon the person to whom it is directed to attend before the registrar for a proclaimed place that, in the opinion of the issuing registrar, is either—

(i) the nearest proclaimed place to the place where that person is resident, as stated by the judgment creditor to the issuing registrar in writing; or

(ii) the most easily accessible to that person,

and that is specified in the summons;

(b) shall summon that person so to attend on a day and at a time fixed by the issuing registrar and specified in the summons, and thereafter as required by the presiding registrar, to be orally examined by the judgment creditor before the presiding registrar; and

(c) may require that person to produce to the presiding registrar, at the examination referred to in paragraph (b), any document or thing in that person's possession or control which tends to show the judgment debtor's true financial circumstances.

(3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons, the judgment creditor may orally examine that person before the presiding registrar as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

(4) The examination summons shall not be directed to an officer or former officer of a corporation under subsection (1) (b) unless the Court or the issuing registrar is

satisfied

satisfied by affidavit or otherwise that the officer or former officer is likely—

(a) to have sufficient knowledge of the affairs of the corporation to enable him to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination under this Subdivision; or

(b) to have in his possession or control any document or thing which tends to show the true financial circumstances of the corporation.

(5) Where in respect of the judgment debt the person to whom the examination summons is directed has attended before a registrar for examination under this Subdivision in answer to or consequent upon the issue of an examination summons, another examination summons directed to that person shall not, unless the Court, on the application of the judgment creditor, otherwise orders, be issued in respect of the judgment debt within three months after that person's attendance.

(6) A registrar may be a presiding registrar as well as the issuing registrar in relation to the one examination summons.

Failure to attend in answer to examination summons.

92. (1) If at the time set down (whether originally or in an order under subsection (7) (b) (ii) or on an adjournment) for the examination of the person to whom an examination summons is directed he fails to attend before the presiding registrar, that registrar, unless he has information satisfying him that the judgment debt has been paid, shall, if the judgment creditor so requests and—

(a) upon due proof of service of the examination summons on the person to whom the summons is directed or, where the examination has been adjourned, that that person has been notified of the time and place fixed for the examination; and

(b)

(b) upon due proof of the tender to that person of the reasonable expenses of attending in answer to the summons, at the time of service of the summons or not later than a reasonable time before the day on which he was required by the summons to attend before the registrar,

report in writing to the Court that that person has so failed to attend.

(2) After the report is made to it, the Court may, if it thinks fit—

(a) authorise the presiding registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or

(b) adjourn the examination of that person and order that he attend before the presiding registrar on a date and at a time specified in the order,

and the presiding registrar shall forthwith give that person, or send to him by post at his address last known to the presiding registrar, a notice informing him of any action taken by the Court under this subsection.

(3) A warrant shall not be issued under this section until after the expiration of fourteen days after the Court authorised its issue.

(4) If during the period of fourteen days after the Court authorised the issue of a warrant in respect of a person he has not attended, by arrangement with the presiding registrar, to be examined as to the matters referred to in section 91 (3), the presiding registrar, on the application of the judgment creditor verified by his affidavit or in such other manner as may be prescribed, may, after the expiration of that period, issue his warrant for the apprehension of that person.

(5)

(5) The warrant shall—

(a) be under the hand of the presiding registrar;

(b) name or otherwise describe the person whose apprehension is required by the warrant;

(c) state shortly the reason for its issue;

(d) order the bailiff, required under section 27 (2) to execute it, to apprehend that person if he is within New South Wales and cause him to be brought before the registrar for the proclaimed place nearest to the place at which he is apprehended to be examined as to the matters referred to in section 91 (3); and

(e) continue in force until it—

(i) is executed;

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the bailiff in whose hands the warrant is for execution; or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of the warrant.

(7) Where the person in respect of whom the issue of a warrant is authorised under subsection (2) (a) attends before a registrar by arrangement, as referred to in subsection (4), or is brought before a registrar under the warrant, as referred to in subsection (5) (d), and—

(a) the judgment creditor attends before the registrar—the judgment creditor may orally examine that person before the registrar as to the matters referred to in section 91 (3); or

(b) the judgment creditor does not so attend—the registrar may—

(i) in accordance with the rules examine that person as to the matters referred to in section 91 (3) and report to the judgment creditor the results of the examination;

(ii) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a day and at a time specified in the order; or

(iii) strike out the examination.

(8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7) (b) (ii) in respect of the examination, or the examination is struck out, whichever first occurs.

Instalment order after examination.

93. (1) Where a person has attended for examination in accordance with this Subdivision before or by the issuing registrar in relation to a judgment debt, that registrar may make an order for the payment of the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order.

(2) An order made under subsection (1) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

Failure to give evidence, etc., at examination.

94. Where a person attends before or is brought before a registrar for examination in accordance with this Subdivision and that person—

(a) without reasonable excuse, refuses to give evidence on oath at the examination;

(b) gives false information at the examination; or

(c) without reasonable excuse, fails to produce any document or thing that he is required by an examination summons to produce thereat,

the Court may, if that registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

Adjournment of examination.

95. A registrar may from time to time adjourn any examination being or to be conducted before or by him under this Subdivision.

Court may exercise registrar's powers under this Subdivision.

96. The Court may exercise or perform any of a registrar's powers, authorities, duties or functions under this Subdivision.

Subdivision 4.—*Attachment of debts.*

Garnishee orders.

97. (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a "garnishee").

(2)

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

(a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee all debts which were due, owing or accruing from him to the judgment debtor at the time when the garnishee order was made and which are so due, owing or accruing at the time of service of the garnishee order;

(b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee; and

(c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).

(3) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached by operation of the order or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

Continuous operation of certain garnishee orders.

98. (1) In this section, "instalment order" means an order made under section 88.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.

(5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

Limitation on operation of garnishee orders attaching a wage or salary.

99. (1) In this section—

"prescribed rate", in relation to a wage or salary, means—

(a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage; or

(b)

(b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

"Sydney basic wage" means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

"wage or salary" includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or

(b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

Payment under certain garnishee orders.

100. (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(2) Where a garnishee makes a deduction in accordance with subsection (1), he shall forward to the judgment creditor, when making payment to the registrar or to

or at the direction of the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;

(b) the amount deducted by the garnishee for his own use under subsection (1); and

(c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of section 105 (2) be deemed to have been paid by the garnishee.

Limitation of payment under certain concurrent garnishee orders.

101. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of

the

the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

(a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary; or

(b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary

Procedure where garnishee order not complied with.

102. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as "the garnishee summons") requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.

(2) The garnishee summons—

(a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either—

(i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing; or

(ii) the most easily accessible to the garnishee,

and that is specified in the garnishee summons; and

(b)

(b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.

(3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question of the amount of the debt, wage or salary (if any) attached by the garnishee order, and may give judgment for that amount, or for the unpaid balance of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for him to attend.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

103. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied. Bank accounts. S.C.R. Pt. 46, rr. 2, 5 (2).

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

(a) a condition that notice is required before money is withdrawn;

(b) a condition that a personal application must be made before money is withdrawn;

(c) a condition that a deposit book must be produced before money is withdrawn; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Lien or claim of third person on debt. S.C.R. Pt. 46, r. 10.

104. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

Payment by garnishee.

105. (1) A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to or at the direction of the judgment creditor.

(2)

(2) Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.

Judgment creditor to account for any excess paid by a garnishee.

106. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : $200.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5.—Writ of execution.

Issue of writ of execution.

107. (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, issue a writ of execution to enforce the judgment in the action.

(2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment—

(a) if a period of twelve years has elapsed since the judgment was given or entered up;

(b)

(b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description;

(d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force; or

(e) in the prescribed circumstances.

Priority and duration of writs of execution.

108. (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by him on the writ, and the bailiff for a proclaimed place who is required, under section 27 (2), to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

Seizing and taking under writ of execution.

109. (1) The bailiff for a proclaimed place who is required, under section 27 (2), to execute a writ of execution may seize and take under the writ and may cause to be sold—

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be

possessed

possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except—

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate $500 in value,

being used as such by the judgment debtor or any member of his family; and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff shall, before he causes any property to be sold under a writ of execution, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his judgment, those prices are most likely to be obtained.

(3) Where it appears to the bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, he shall first cause to be sold so much of the property as appears to him to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to him to be sufficient to satisfy the balance due under the execution.

(4) The bailiff shall cause property to be sold under subsection (3)—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense;

(b)

(b) subject to paragraph (a), in such order as the judgment debtor may direct; and

(c) subject to paragraphs (a) and (b), in such order as seems to the bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the bailiff to the judgment creditor.

(6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(7) Where a bailiff may cause property to be sold under a writ of execution, the property may be sold by that bailiff or by another bailiff or, in the case of land, by an auctioneer, as referred to in section 111.

(8) Where any property is to be put up for sale under a writ of execution, the bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.

(9) A bailiff may serve—

(a) on a judgment debtor against whom a writ of execution has been issued; or

(b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the personal property of the judgment debtor in his custody as has been seized under the writ of execution.

(10) A person (whether or not he is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Penalty : $500.

(11) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

Special provisions as to execution against land.

110. (1) Subject to section 105 of the Real Property Act, 1900, and section 188 of the Conveyancing Act, 1919, a writ of execution, when delivered to the bailiff required under section 27 (2) to execute it, binds land in like manner as a writ of execution against property binds goods and chattels.

(2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless—

(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or

(b) the bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(3) A bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the bailiff with the prescribed procedures, but a

purchaser

purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.

(4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.

(5) Where land that is not under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the registrar for that place shall execute a proper assurance thereof in favour of the purchaser.

(6) Where land that is under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the duty imposed on a registrar by section 105 (2) of that Act shall not be performed except by the registrar for that place.

111. The rules may make provision for or with respect to— Auctioneers.

(a) the appointment of an auctioneer licensed under the Auctioneers and Agents Act, 1941, to sell any land under a writ of execution; and

(b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the bailiff in connection with the sale of the land.

112.

(5) The warrant shall—

(a) be under the hand of the presiding registrar;

(b) name or otherwise describe the person whose apprehension is required by the warrant;

(c) state shortly the reason for its issue;

(d) order the bailiff, required under section 27 (2) to execute it, to apprehend that person if he is within New South Wales and cause him to be brought before the registrar for the proclaimed place nearest to the place at which he is apprehended to be examined as to the matters referred to in section 91 (3); and

(e) continue in force until it—

(i) is executed;

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the bailiff in whose hands the warrant is for execution; or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of the warrant.

(7) Where the person in respect of whom the issue of a warrant is authorised under subsection (2) (a) attends before a registrar by arrangement, as referred to in subsection (4), or is brought before a registrar under the warrant, as referred to in subsection (5) (d), and—

(a) the judgment creditor attends before the registrar—the judgment creditor may orally examine that person before the registrar as to the matters referred to in section 91 (3); or

(b) the judgment creditor does not so attend—the registrar may—

(i) in accordance with the rules examine that person as to the matters referred to in section 91 (3) and report to the judgment creditor the results of the examination;

(ii) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a day and at a time specified in the order; or

(iii) strike out the examination.

(8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7) (b) (ii) in respect of the examination, or the examination is struck out, whichever first occurs.

Instalment order after examination.

93. (1) Where a person has attended for examination in accordance with this Subdivision before or by the issuing registrar in relation to a judgment debt, that registrar may make an order for the payment of the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order.

(2) An order made under subsection (1) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

Failure to give evidence, etc., at examination.

94. Where a person attends before or is brought before a registrar for examination in accordance with this Subdivision and that person—

(a) without reasonable excuse, refuses to give evidence on oath at the examination;

(b) gives false information at the examination; or

(c) without reasonable excuse, fails to produce any document or thing that he is required by an examination summons to produce thereat,

the Court may, if that registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

Adjournment of examination.

95. A registrar may from time to time adjourn any examination being or to be conducted before or by him under this Subdivision.

Court may exercise registrar's powers under this Subdivision.

96. The Court may exercise or perform any of a registrar's powers, authorities, duties or functions under this Subdivision.

Subdivision 4.—Attachment of debts.

Garnishee orders.

97. (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a "garnishee").

(2)

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

(a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee all debts which were due, owing or accruing from him to the judgment debtor at the time when the garnishee order was made and which are so due, owing or accruing at the time of service of the garnishee order;

(b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee; and

(c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).

(3) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached by operation of the order or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

Continuous operation of certain garnishee orders.

98. (1) In this section, "instalment order" means an order made under section 88.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.

(5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

Limitation on operation of garnishee orders attaching a wage or salary.

99. (1) In this section—

"prescribed rate", in relation to a wage or salary, means—

(a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage; or

(b)

(b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

"Sydney basic wage" means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

"wage or salary" includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or

(b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

Payment under certain garnishee orders.

100. (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(2) Where a garnishee makes a deduction in accordance with subsection (1), he shall forward to the judgment creditor, when making payment to the registrar or to

or at the direction of the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;

(b) the amount deducted by the garnishee for his own use under subsection (1); and

(c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of section 105 (2) be deemed to have been paid by the garnishee.

Limitation of payment under certain concurrent garnishee orders.

101. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of

the

the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

(a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary; or

(b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary

Procedure where garnishee order not complied with.

102. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as "the garnishee summons") requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.

(2) The garnishee summons—

(a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either—

(i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing; or

(ii) the most easily accessible to the garnishee,

and that is specified in the garnishee summons; and

(b)

(b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.

(3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question of the amount of the debt, wage or salary (if any) attached by the garnishee order, and may give judgment for that amount, or for the unpaid balance of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for him to attend.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

103. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied. Bank accounts. S.C.R. Pt. 46, rr. 2, 5 (2).

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

(a) a condition that notice is required before money is withdrawn;

(b)

(b) a condition that a personal application must be made before money is withdrawn;

(c) a condition that a deposit book must be produced before money is withdrawn; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Lien or claim of third person on debt. S.C.R. Pt. 46, r. 10.

104. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

Payment by garnishee.

105. (1) A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to or at the direction of the judgment creditor.

(2)

(2) Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.

Judgment creditor to account for any excess paid by a garnishee.

106. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : $200.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5.—Writ of execution.

Issue of writ of execution.

107. (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, issue a writ of execution to enforce the judgment in the action.

(2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment—

(a) if a period of twelve years has elapsed since the judgment was given or entered up;

(b)

(b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description;

(d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force; or

(e) in the prescribed circumstances.

Priority and duration of writs of execution.

108. (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by him on the writ, and the bailiff for a proclaimed place who is required, under section 27 (2), to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

Seizing and taking under writ of execution.

109. (1) The bailiff for a proclaimed place who is required, under section 27 (2), to execute a writ of execution may seize and take under the writ and may cause to be sold—

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be

possessed

possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except—

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate $500 in value,

being used as such by the judgment debtor or any member of his family; and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff shall, before he causes any property to be sold under a writ of execution, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his judgment, those prices are most likely to be obtained.

(3) Where it appears to the bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, he shall first cause to be sold so much of the property as appears to him to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to him to be sufficient to satisfy the balance due under the execution.

(4) The bailiff shall cause property to be sold under subsection (3)—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense;

(b)

(b) subject to paragraph (a), in such order as the judgment debtor may direct; and

(c) subject to paragraphs (a) and (b), in such order as seems to the bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the bailiff to the judgment creditor.

(6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(7) Where a bailiff may cause property to be sold under a writ of execution, the property may be sold by that bailiff or by another bailiff or, in the case of land, by an auctioneer, as referred to in section 111.

(8) Where any property is to be put up for sale under a writ of execution, the bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.

(9) A bailiff may serve—

(a) on a judgment debtor against whom a writ of execution has been issued; or

(b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the personal property of the judgment debtor in his custody as has been seized under the writ of execution.

(10) A person (whether or not he is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Penalty : $500.

(11) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

Special provisions as to execution against land.

110. (1) Subject to section 105 of the Real Property Act, 1900, and section 188 of the Conveyancing Act, 1919, a writ of execution, when delivered to the bailiff required under section 27 (2) to execute it, binds land in like manner as a writ of execution against property binds goods and chattels.

(2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless—

(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or

(b) the bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(3) A bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the bailiff with the prescribed procedures, but a

purchaser

purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.

(4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.

(5) Where land that is not under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the registrar for that place shall execute a proper assurance thereof in favour of the purchaser.

(6) Where land that is under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the duty imposed on a registrar by section 105 (2) of that Act shall not be performed except by the registrar for that place.

111. The rules may make provision for or with respect to— Auctioneers.

(a) the appointment of an auctioneer licensed under the Auctioneers and Agents Act, 1941, to sell any land under a writ of execution; and

(b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the bailiff in connection with the sale of the land.

112.

112. (1) In this section— Sale or mortgage by judgment debtor of land affected by writ.

"issuing registrar", in relation to a writ of execution, means the registrar for the proclaimed place at which the writ of execution was issued;

"notice of consent" means the notice referred to in subsection (2) (a).

(2) Where land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act, 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act, 1919, and—

(a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor;

(b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage;

(c) the notice of consent is filed with the issuing registrar; and

(d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) Where during that prescribed period—

(a) the judgment debtor sells or mortgages the land;

(b) in the case of a sale—the amount of the deposit (if any) is paid to the issuing registrar, to be held by him as stakeholder; and

(c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than—

(i) the minimum amount referred to in subsection (2) (b); or

(ii) if the judgment creditor notifies the issuing registrar in writing that he consents to payment of a specified amount that is less than that minimum amount—that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar shall, upon production to him of the instrument evidencing the sale or mortgage, and if he is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his consent to the sale or mortgage.

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent shall not, in relation to the land, be affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), shall, subject to and in accordance with the rules—

(a) be paid to or at the direction of the judgment creditor; and

(b) be in reduction of the judgment debt.

Subdivision

Subdivision 6.—Writ against the person.

Writ against the person.

113. (1) Where the Court is satisfied on the application of a judgment creditor that—

(a) the judgment debt arising from an action has not been satisfied; and

(b) the judgment debtor is about to leave the Commonwealth, or to remove any property from the Commonwealth, with intent to evade payment of the judgment debt,

the Court may, if it thinks fit, authorise the registrar to issue a writ against the person of the judgment debtor to enforce payment of the judgment debt and the registrar shall, on being so authorised, issue the writ.

(2) A writ against the person of a judgment debtor shall—

(a) be under the hand of the registrar by whom it is issued;

(b) name or otherwise describe the judgment debtor whose arrest and imprisonment is required by the writ;

(c) order the bailiff, required under section 27 (2) to execute it, to arrest the judgment debtor if he is within New South Wales and to deliver him to the governor of the prison to whom it is directed;

(d) order the governor of the prison to whom it is directed to keep him in custody until discharged in accordance with law; and

(e) continue in force until the judgment debtor is so discharged or, if the judgment debtor is not arrested, until it expires in accordance with the rules,

and may lawfully be executed on a Sunday.

(3) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of a writ against the person.

(4) The arrest or imprisonment of a judgment debtor under a writ against the person shall not operate as a satisfaction of the judgment debt or any part thereof, but the issue of the writ shall, except as provided in this Subdivision, operate as a stay of enforcement of the judgment until the writ ceases to be in force.

(5) In this section, "the Commonwealth" includes any part of the Commonwealth within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended.

Discharge of judgment debtor.

114. (1) A judgment debtor arrested or imprisoned under a writ against the person shall be discharged from custody under the writ on payment of the amount specified in the writ as being due under the judgment and the costs of executing the writ, and any bailiff, and the governor of any prison, in whose custody the judgment debtor is under the writ, are hereby empowered and required to receive that amount and those costs if tendered, and to transmit them to the registrar for the proclaimed place at which the writ was issued.

(2) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the registrar for the proclaimed place at which the writ was issued a request in writing for the discharge of the judgment debtor from custody, the registrar shall, as soon as practicable after receipt of the request, issue a notice requesting the discharge of the judgment debtor and send or deliver the notice to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ, and the bailiff or governor of the prison shall on receipt of the notice forthwith discharge the judgment debtor from custody under the writ.

(3) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ a request in writing for the discharge of the judgment debtor, the bailiff or governor of the prison shall on receipt of the request forthwith discharge the judgment debtor from custody under the writ.

(4) Where a judgment debtor makes application to the governor of the prison in whose custody he is under a writ against the person for his discharge from that custody, the governor shall as soon as practicable cause the judgment debtor to be brought before the Court at the most convenient proclaimed place for the purpose of making his application to the Court, and on hearing any such application the Court may, if it thinks fit, order, on terms, that the judgment debtor be discharged from custody under the writ.

(5) Where a judgment debtor is discharged by virtue of subsection (2), (3) or (4) from the custody in which he is held under a writ against the person, the discharge from custody shall not operate as a satisfaction of the judgment debt or any part thereof.

DIVISION 5.—*Actions: Interpleader.*

Interpleader by defendant or bailiff.

115. (1) An application may be made for relief by way of interpleader—

(a) by a defendant in an action for or in respect of any debt, money, goods or chattels to which some third party makes a claim; or

(b) by a bailiff if a claim is made to any money, goods or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

(2) An application under subsection (1)—

(a) by a defendant in an action shall be made to the registrar for the proper place in relation to the action; or

(b) by a bailiff, required under section 27 (2) to execute a writ of execution, shall be made to the registrar for the proclaimed place for which he is bailiff.

(3) Where the application is made by the defendant, it shall be supported by an affidavit showing—

(a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;

(b) that the applicant does not collude with the person making a claim as referred to in subsection (1) (a); and

(c) that the applicant is willing to pay or transfer the subject-matter in dispute into court or, if the registrar so requires, to give security to the value of the subject-matter to the satisfaction of the registrar.

Claim to property taken or intended to be taken in execution.

116. (1) Where—

(a) a person, other than the person against whom a writ of execution is issued, makes to the bailiff a claim to any money, goods or chattels (in this section referred to as "the property") taken or intended to be taken in execution under the writ;

(b) the judgment creditor has not, in accordance with the rules, directed the bailiff to withdraw from possession of the property, or not to seize the property, as the case may require; and

(c) the property has not been sold under the writ,

then—

(d) where, whether or not a notice referred to in paragraph (e) is given to the claimant and whether or not the period specified in the notice has expired, the claimant pays to the bailiff an amount equal to the value of the property or gives the bailiff security to that value—the property shall thereupon be released from execution under the writ and the bailiff shall make an application for relief by way of interpleader under section 115 in respect of the amount so paid or the security so given; or

(e) where the claimant neither pays that amount nor gives that security before the expiration of a reasonable period specified in a notice given by the bailiff to the claimant for the purposes of this subsection —the bailiff—

(i) may make an application for relief by way of interpleader under section 115 in respect of the property; or

(ii) may, subject to paragraph (d), sell the property as if the claim had not been made, and shall make an application under section 115 for relief by way of interpleader in respect of the proceeds of the sale as if the claim had been made to those proceeds.

(2) The rules may require that a claim referred to in subsection (1) be verified by affidavit of the claimant.

(3) The amount of the value and the nature of the security referred to in subsection (1) shall be as may be agreed upon between the claimant and the bailiff, or where they have not agreed be as determined by some competent person appointed by the registrar, and the costs of the determination shall in the first instance be payable by the claimant.

(4) Any amount paid to the bailiff as referred to in subsection (1) (d), and the proceeds of any sale under subsection (1) (e) (ii), shall as soon as practicable thereafter be paid by the bailiff to the registrar to whom the bailiff's application for relief by way of interpleader is made, and shall be paid out by the registrar in accordance with the order of the Court.

Where application for relief made.

117. (1) Upon an application being made to a registrar under section 115, the registrar shall issue a summons calling upon the claimant to state the nature and particulars of his claim in such form and within such time as may be prescribed.

(2) Upon the issue of the summons and, where the application for relief is made by the defendant, upon the payment of the amount of the claim, or the transfer of the property the subject of the claim, into court, or, if the registrar so requires, upon the defendant giving security to the value of that property, all proceedings in the action and in any other action which may have been brought in the Court, the Supreme Court or any court of petty sessions in respect of the claim shall be stayed.

(3) If the claimant complies with the summons, the registrar shall record the commencement of an interpleader action and issue notice of that action to the claimant and to

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the execution creditor or the plaintiff in the original action, and the Court shall adjudicate upon the claim, and—

(a) make such order between the parties in respect thereof, of the costs of the proceedings and of the continuance of the actions in which proceedings have been stayed; and

(b) where any amount has been paid, or security has been given, to a bailiff in respect of property the subject of the claim, or the property has been sold under section 116 (1) (e) (ii), make such order with respect to the payment of the amount, or the enforcement or discharge of the security, or the proceeds of sale of the property,

as may to it seem fit.

(4) An order made under subsection (3) may be enforced in the same manner as a judgment in an action.

(5) If the claimant fails to comply with the summons—

(a) the stay of proceedings shall be removed;

(b) any money paid, or any property the subject-matter of an action transferred, by a defendant into court under subsection (2) shall be paid or transferred by the registrar to the plaintiff; and

(c) the claimant shall be forever barred from prosecuting any claim in respect of the subject-matter of the action, or the property the subject of the claim made to the bailiff, as the case may be,

unless the Court otherwise orders upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed, and where any money has been paid into court by the bailiff or any security has been given to the bailiff or registrar in respect of the property the subject of

the

the claim or the subject-matter of the action the Court may make such order with respect to the payment of that money or the enforcement or discharge of that security as it thinks fit.

(6) The rules may make provision for or with respect to the practice and procedure of the Court in relation to interpleader actions.

118. Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other. Adverse titles.

DIVISION 6.—*Actions: Costs.*

119. In this Division, "costs" means costs payable between party and party, and includes disbursements. Interpretation: Pt. III, Div. 6.

120. Subject to section 124, the costs of any action, including the costs of any proceedings ancillary to the action, shall be paid by or apportioned between the parties in such manner as the Court in its discretion orders and, in default of any such order, shall, except where otherwise provided by the rules, follow the event of the action. Costs in discretion of Court or follow event.

121. Where— Agreement as to costs.

(a) a party's costs, or any part thereof, in an action are required to be paid by another party;

(b)

(b) the parties agree upon the amount of those costs; and

(c) the agreement is evidenced to the registrar in the prescribed manner,

the amount of those costs shall be as so agreed upon.

Taxation of costs.

122. (1) Where—

(a) a party's costs in an action are required to be paid by another party; and

(b) an agreement as to the amount of those costs is not entered into and evidenced as required by section 121,

the amount of those costs shall be as determined—

(c) except as provided by paragraph (d), by taxation, in accordance with the rules, by the registrar for the proper place in relation to the action; or

(d) if the action is within a prescribed class of actions and if the Court so orders on the application of any party or without any such application—by taxation, in accordance with the rules, by the registrar for Sydney.

(2) On a taxation of costs—

(a) no item shall be allowed that is not authorised by the rules; and

(b) where an item is allowed, the amount to be allowed for the item shall, subject to subsection (3), be the amount specified in the rules in relation to items of the class to which that item belongs.

(3)

(3) The rules may require that costs payable in any action be reduced by reference to the amount recovered in the action or otherwise.

(4) A taxation of costs may be reviewed by the Court in accordance with the rules.

Costs form part of judgment debt.

123. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

Limitations on costs.

124. (1) If in any action which could have been brought in a court of petty sessions but which is brought in the Court—

(a) the plaintiff recovers a total amount which does not exceed $100 by payment by or on behalf of the defendant without judgment; or

(b) judgment is given or entered up in favour of the plaintiff for an amount which does not exceed $100,

the plaintiff shall not be entitled to recover any costs in the action unless the Court certifies that it appears to it that there was a sufficient reason for bringing or trying the action in the Court.

(2) Subsection (1) does not apply in respect of an action in which judgment is given or entered up for an amount which does not exceed $100 but which would have exceeded $100 but for—

(a) any verdict against the plaintiff on any cross-claim pleaded by the defendant; or

(b) any reduction of the damages due to the plaintiff under Part III of the Law Reform (Miscellaneous Provisions) Act, 1965,

or but for both such a verdict and such a reduction.

(3) No fees to barristers or solicitors shall be allowed in any action for the recovery of a debt or liquidated demand if—

(a) the amount sued for does not exceed $250; and

(b) the defendant does not file notice of the grounds of his defence under section 56.

DIVISION 7.—*Actions: New Trial and Appeal.*

125. In this Division, "action" includes interpleader action. Interpretation: Pt. III, Div. 7.

126. (1) The Court in its discretion may, after judgment in an action, order that a new trial of the action be had if— Order of the Court for new trial.

(a) the parties to the action consent; or

(b) the action is tried with a jury and on the day on which the jury gives its verdict in the action a party to the action—

(i) in the presence of the other party; or

(ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party,

makes application for the order.

(2) The Court may, before judgment in an action and if no verdict in the action has been entered, order, on sufficient cause being shown, that the hearing of the action be discontinued and that a new trial be had.

127. (1) Subject to section 130, where, after judgment in an action, an order has not been made under section 126 (1) in respect of the action, an application for a new trial in respect of the action may be made to the Supreme Court. Application to Supreme Court for new trial.

(2)

(2) On an application under this section in respect of an action, the Supreme Court may order a new trial of the action or of any issue therein or may refuse to make such an order.

(3) An application under this section shall be deemed to be an appeal to which sections 106 and 107 of the Supreme Court Act, 1970, apply.

(4) Without affecting the generality of subsection (2), the Supreme Court may order a new trial under this section on the ground that a verdict, finding or assessment of the Judge, whether sitting with or without a jury, is against the evidence and the weight of evidence.

(5) An application under this section shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Appeal to Supreme Court.

128. (1) Except in the case of an action of the nature mentioned in subsection (2), an appeal shall, subject to sections 129 and 130, lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, in an action.

(2) In the case of an action in which the relief sought or granted includes an injunction under section 46, an appeal shall lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, or upon the determination of any question of fact, in the action.

(3) In an appeal under subsection (1) or (2), the Supreme Court—

(a) if it is of the opinion that a nonsuit should have been ordered at the trial—may order a nonsuit;

(b)

(b) if it is of the opinion that upon the evidence any party is as a matter of law entitled to a verdict in the action or upon any issue therein—may give that verdict and may order that such judgment be entered as is appropriate to that verdict; or

(c) may order that a new trial of the action or of any issue therein be had,

or may refuse to make such an order or give such a verdict.

(4) In an appeal under subsection (2), the Supreme Court may grant, refuse, vary or rescind any injunction relative to the action.

(5) Where no injunction under section 46 is granted in an action in which the relief sought includes such an injunction, the Supreme Court may, if it thinks fit, refuse to entertain an appeal under subsection (2) in relation to the action if it is of the opinion that the injunction was sought only for the purpose of securing the right to appeal under subsection (2).

(6) An appeal under subsection (1) or (2) shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Agreement not to appeal.

129. An appeal shall not lie under section 128 (1) from any ruling, order, direction or decision of the Court if before the ruling, order, direction or decision is pronounced the parties agree in writing, signed by themselves or their solicitors, that the ruling, order, direction or decision shall be final.

130.

Whether application or appeal to Supreme Court is as of right.

130. (1) An application under section 127 may be made or an appeal under section 128 (1) lies—

(a) where the application or appeal involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of $1,000 or upwards—as of right; or

(b) in any case—by leave of the Supreme Court.

(2) An appeal under section 128 (2) lies as of right.

Stay of proceedings on an application or appeal to Supreme Court.

131. (1) Where—

(a) after judgment in an action the Court orders that proceedings be stayed during the period within which an application under section 127 may be made or an appeal under section 128 may be brought; and

(b) during that period—

(i) such an application is made or such an appeal is brought in respect of those proceedings; and

(ii) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the applicant or appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,

the

the stay of proceedings shall continue until the application or appeal is disposed of or until the Court or the Supreme Court otherwise orders.

(2) Except as provided in this section or as directed by the Supreme Court, an application or appeal referred to in subsection (1) shall not operate as a stay of proceedings.

(3) This section does not affect the operation of section 156 (3).

DIVISION 8.—*Miscellaneous Jurisdiction.*

Subdivision 1.—*General.*

132. Subject to this Act and the rules, nothing in Divisions 2 to 7 (inclusive) applies to or in respect of any proceedings under this Division. Non-application of Divs. 2-7.

Subdivision 2.—*Possession of land and equity proceedings.*

133. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for possession of land the value of which does not exceed $10,000, as determined by the Court. Jurisdiction in proceedings for possession of land.

(2) Nothing in subsection (1) applies in respect of proceedings under the Landlord and Tenant Act, 1899.

134. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for— Jurisdiction in equity proceedings.

(a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien where the amount owing in respect of the mortgage, charge or lien does not exceed $5,000, as determined by the Court;

(b) the specific performance, rectification, delivery up or cancellation of any agreement for—

(i) the sale or purchase of any property at a price not exceeding $5,000; or

(ii) the lease of any property the value of which does not exceed $5,000, as determined by the Court;

(c) an order under section 3 of the Testator's Family Maintenance and Guardianship of Infants Act, 1916;

(d) relief against fraud or mistake where the damage sustained or the estate or fund in respect of which relief is sought does not exceed $5,000 in amount or value, as determined by the Court;

(e) the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed $5,000 in amount or value, as determined by the Court; or

(f) the administration of the estate of a deceased person, where the estate does not exceed $5,000 in amount or value, as determined by the Court.

(2)

(2) In any proceedings pursuant to subsection (1) (c), the Court shall not have power to make an order for provision under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, that will or may result in the amount of provision so made exceeding $5,000.

Commencement of proceedings.

135. (1) Proceedings in the Court for possession of land shall be commenced at the nearest proclaimed place to the place in New South Wales where the land or any part of the land is situated.

(2) Proceedings in the Court under section 134 shall be commenced at the nearest proclaimed place to the place in New South Wales—

(a) in the case of proceedings pursuant to section 134 (1) (a) or (b)—

(i) where the mortgage, charge or lien is of or over land or the agreement is in respect of the sale, purchase or lease of land—where a defendant is resident or carries on business or where the land or any part of the land is situated; or

(ii) in any other case—where a defendant is resident or carries on his business;

(b) in the case of proceedings pursuant to section 134 (1) (c) or (f)—

(i) where the deceased person last resided; or

(ii) where an executor or administrator is resident or carries on his business; or

(c) in the case of proceedings pursuant to section 134 (1) (d) or (e)—where a defendant is resident or carries on his business.

Proceedings commenced at wrong proclaimed place.

136. Where proceedings under this Subdivision, not being proceedings transferred to the Court under section 143 (2), are commenced at a proclaimed place that is not a place at which they ought, under section 135, to have been commenced, the Court may, on the application of a party to the proceedings or without any such application—

(a) order that the proceedings be continued in the Court notwithstanding that they were commenced at that place;

(b) order a change of venue of the proceedings, under section 40, to such other proclaimed place as the Court thinks proper; or

(c) strike out the proceedings.

Powers of the Court under this Subdivision.

137. In relation to proceedings under this Subdivision—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of any judgment or order of the Court in those proceedings.

Rules.

138. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings;

(b) the costs of any such proceedings; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

Appeal.

139. Division 7 applies to and in respect of proceedings under this Subdivision in the same way as if they were an action.

Subdivision 3.—*Temporary injunctions.*

Temporary injunctions.

140. (1) The Court shall have jurisdiction to grant an injunction, to be called a temporary injunction, to restrain—

(a) a threatened or apprehended trespass or nuisance; or

(b)

(b) the breach of a negative stipulation in a contract the consideration for which does not exceed $5,000,

in like manner, subject to this Subdivision, as the Supreme Court might grant an interlocutory injunction in like circumstances.

(2) Subject to this Subdivision, a temporary injunction shall continue in force for a specified period not exceeding fourteen days, but if the specified period is less than fourteen days, it may be renewed from time to time, but so that the total period for which the temporary injunction is in force does not exceed fourteen days.

(3) A temporary injunction may be renewed so that the total period for which it is in force exceeds fourteen days if the Court is satisfied that the additional time is required to enable proceedings to be commenced or heard in the Supreme Court in relation to the matter.

(4) A temporary injunction shall cease to be in force if—

(a) the Court, on the application of a party, so orders; or

(b) the Supreme Court, on the application of a party, so orders, whether or not the Supreme Court grants an injunction or gives any other relief in relation to the matter.

(5) Proceedings for a temporary injunction may be commenced at any proclaimed place, not being a prescribed proclaimed place.

(6) A temporary injunction may be renewed by the Court only where it is sitting at a proclaimed place that is not a prescribed proclaimed place.

(7)

(7) A reference in this section to the renewal of a temporary injunction includes a reference to the grant of another temporary injunction in respect of the same matter by the Court, whether before or after the expiry of the first-mentioned injunction.

Powers of Court under this Subdivision.

141. With respect to temporary injunctions—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof with respect to the granting of interlocutory injunctions;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge with respect to interlocutory injunctions; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable with respect to the granting of interlocutory injunctions; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of a temporary injunction and any order of the Court made in connection with proceedings for the granting of the temporary injunction.

142. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to— Rules.

(a) the procedure to be followed with respect to the granting and enforcing of temporary injunctions;

(b) the costs of proceedings in the Court in relation to temporary injunctions; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court.*

Subdivision 1.—*Transfer of proceedings from Supreme Court.*

143. (1) Where any proceedings that are pending in the Supreme Court could have been commenced as an action in the Court, and pleadings in the Supreme Court have closed, and the claim in the proceedings— Transfer of proceedings from Supreme Court.

(a) does not exceed $3,000; or

(b) though it originally exceeded $3,000, is reduced by payment, an admitted set-off or otherwise to an amount not exceeding $3,000,

and the whole or part of the demand of the plaintiff is contested, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(2) Where any proceedings that are pending in the Supreme Court could have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

144. (1) Where the Supreme Court makes an order under section 143 (1) for the transfer of any proceedings to the Court sitting at a proclaimed place— Procedure on transfer.

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings in the proceedings with the registrar for that place and, if the plaintiff does not lodge those copies within ten days after the entry of the order, the defendant may lodge them with the registrar;

(b) when the copies have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become an action in the Court to try the issues raised by the pleadings and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with Division 6; and

(ii) as regards costs of the order, copies of the order and pleadings, and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

(2)

(2) Where the Supreme Court makes an order under section 143 (2) for the transfer of any proceedings to the Court sitting at a proclaimed place—

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings (if any) in the proceedings with the registrar for that place and, if the plaintiff does not lodge that copy or those copies, as the case may be, within ten days after the entry of the order, the defendant may lodge it or them with the registrar;

(b) when the copy or copies, as the case may be, has or have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become proceedings in the Court and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with the rules made in pursuance of section 138 (b); and

(ii) as regards costs of the order, copies of the order and pleadings (if any), and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

Subdivision

Subdivision 2.—Transfer of proceedings to Supreme Court.

Transfer of proceedings to Supreme Court.

145. Proceedings may, upon the application of a party, be removed into the Supreme Court by order of the Supreme Court upon such terms as to payment of costs, giving security for the amount claimed or costs, or otherwise, as the Supreme Court thinks fit.

Stay of proceedings on application for order.

146. (1) Where an application is pending in the Supreme Court for an order of removal or prohibition relating to any proceedings, the Supreme Court may make orders for a stay of the proceedings until the determination of the application or until the Supreme Court otherwise orders.

(2) An order for a stay of proceedings made under subsection (1) shall take effect immediately a copy of the order is served by the party who obtained the order upon the registrar for the proper place in relation to the action.

Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court.

147. (1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value—

(a) in the case of proceedings under section 133—$10,000; or

(b) in the case of proceedings under section 134—$5,000,

the validity of any order already made in the proceedings shall not be affected by that decision, and—

(c) the Court shall order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (d), the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and

(d)

(d) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (c) had not been made and as if the subject-matter did not exceed in amount or value the amount mentioned in paragraph (a) or (b), as the case may require.

(2) Subject to subsection (1), the Court may, during the progress of any proceedings under Subdivision 2 of Division 8, for any reason that appears to it to be sufficient, order that the proceedings be transferred to the Supreme Court, and—

(a) the validity of any order already made in the proceedings shall not be affected by the order for transfer; and

(b) the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court.

Removal of proceedings otherwise.

148. Proceedings shall not, except as provided by this Act, be removed out of the Court by appeal, motion, order or otherwise.

DIVISION 10.—*Miscellaneous Provisions.*

Costs where no jurisdiction.

149. Where any proceedings purport to be commenced in the Court and the Court has no jurisdiction to hear and dispose of the proceedings, the Court may, notwithstanding the lack of jurisdiction, make such order (if any) as it thinks fit for the payment by any party to any other party of the costs of the proceedings in the Court, and any such order for costs may be enforced as if the Court had had jurisdiction to hear and dispose of the proceedings.

150.

Regulations: Court fees.

150. (1) The Governor may make regulations for or with respect to fees to be paid in respect of the business of the Court.

(2) Different regulations may be made under this section to apply in different circumstances.

Fees form part of Consolidated Revenue Fund.

151. All fees received by a registrar under this Act shall be paid by him to the Treasurer for payment to the Consolidated Revenue Fund.

Unclaimed money.

152. (1) An amount which—

(a) was paid to a registrar for or on account of or for the use or benefit of any party to any proceedings; and

(b) remains unclaimed in the hands of the registrar for one year after a party to the proceedings becomes entitled to claim the amount,

shall be paid by the registrar to the Treasurer and placed to the credit of the Special Deposits Account in the Treasury.

(2) Section 30 of the Audit Act, 1902, does not apply to any amount referred to in subsection (1) of this section, but section 31 of that Act applies to any amount placed to the credit of the Special Deposits Account under subsection (1) of this section as if the amount had been so placed under section 30 of that Act.

Proceedings for offences.

153. (1) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

(2) Nothing in subsection (1) applies in respect of the imposition of a fine under section 64 or 65.

Offences by corporations.

154. Where a person convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence was an officer of the corporation shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, if he knowingly and wilfully authorised or permitted the commission of the offence.

Civil remedy not affected by proceedings for an offence.

155. Notwithstanding any proceedings against a person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

Miscellaneous powers of Court in respect of proceedings, etc.

156. (1) Subject to section 36, the Court may, on terms, adjourn any sittings or the trial of any proceedings in such manner as the Court thinks fit.

(2) The Court may give directions as to the orderly transaction of the business of the Court in relation to any proceedings.

(3) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

(4) Nothing in this section limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or law to adjourn any sittings or trial, or to give directions or to stay proceedings.

Service of documents.

157. Service of a document for the purposes of or in relation to any proceedings shall be effected by a person prescribed in respect of the class of document to which that document belongs, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such other manner as may be prescribed.

Directions where no procedure provided.

158. If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under this Act or the law under which the step is to be taken or by the practice of the Court, the Court may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall for the purposes of the proceedings be regular and sufficient.

Irregularity. No. 52, 1970, s. 81.

159. (1) Where, in the purported commencement of any proceedings or at any stage in the course of or in connection with any proceedings, there is, by reason of anything done or left undone, a failure to comply with any requirement of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect—

(a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings; and

(b)

(b) subject to subsections (2) and (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings, or exercise its powers under the rules to allow amendments and to make orders dealing with the proceedings generally.

(2) The Court shall not wholly set aside any proceedings on the ground that although not constituting an action for the recovery of a debt or liquidated demand they were commenced by the lodging of a statement of liquidated claim.

(3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection (1) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

Officer acting for corporation.

160. For the purposes of this Act, a corporation may, subject to and in accordance with the rules, authorise an officer of the corporation to sign any document, or do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be deemed to be signed or done by the corporation.

DIVISION 11.—*Rules.*

Rules.

161. (1) The Chief Judge and any four other Judges may make rules for or with respect to—

(a) the procedure (including the method of pleading) and the practice to be followed in the Court in any proceedings (including the procedure and practice

to

to be followed in the offices of the Court) and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any application or appeal which under this or any other Act or Commonwealth Act is to be made to the Court or a registrar;

(b) any matter which, under any Act, may be regulated or prescribed by rules of the Court, or by rules made by the Judges or a majority of Judges or any number of Judges or a Judge;

(c) the joinder of causes of action, the consolidation of proceedings and the joinder, misjoinder and non-joinder of parties;

(d) the continuance of proceedings on the death or bankruptcy of any party or otherwise;

(e) the pleading of cross-claims (whether in the nature of set-off, cross-action or otherwise);

(f) regulating, or empowering a registrar to regulate, the order of business of the Court sitting at any proclaimed place and empowering a Judge or a registrar to give directions as to the steps to be taken to make any proceedings ready for trial, and for this purpose authorising a registrar to exercise the powers of the Court under section 69 (1) (b);

(g) the hearing of proceedings during vacation;

(h) the duties of, and the records to be kept by, the registrars and other officers of the Court in relation to or for the purpose of any proceedings;

(i) any matters relating to the costs of proceedings;

(j) any matters relating to the taxation or other ascertainment of costs payable by a party to another party in proceedings in the Court, including the fixing of scales of costs and witnesses' expenses so payable;

(k) the practice and procedure to be followed in the enforcement of judgments and orders of the Court;

(l) the evidence that may be given at the trial of any proceedings by affidavit, and the circumstances in which evidence may be so given, but so as not to dispense with the attendance of any witness whose attendance for cross-examination is required by any party to the proceedings, and the means by which particular facts may be proved, and the mode in which evidence may be given, in any proceedings;

(m) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence;

(n) prescribing the cases in which security may be required in respect of any proceedings, and the form of any such security, and the manner in which it is to be given, or whether it is to be given to the satisfaction of the registrar;

(o) the payment of money into or out of the Court;

(p) the times for doing any matter or thing for the purposes of this Act or the rules in or in connection with any proceedings;

(q) the giving of notices required by or under this Act to be given;

(r) the amendment, whether by a party or by order of the Court, of any document filed by a party;

(s) the striking out, by order of the Court, of the whole or any part of a statement of claim or a document filed by a party; and

(t) all matters that by this Act (sections 150 and 171 excepted) are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The rules may make provision for or with respect to the bringing of money into court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to—

(a) prescribing the manner in which money may be so brought into court;

(b) without affecting the generality of paragraph (a), deeming money to be brought into court if there is filed a security given by a licensed insurer under the Workers' Compensation Act, 1926, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942;

(c) requiring the insurer who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the insurer; and

(d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into court.

(3) Different rules may be made to apply in different circumstances.

(4) After the commencement of this Act no power conferred by any Act upon the Judges or a majority of Judges or any number of Judges or a Judge to make rules shall be exercised otherwise than by the Chief Judge and any four other Judges making in respect of that matter rules under and in accordance with this Act.

(5) Any rules made under any power conferred upon the Judges or a majority of Judges or any number of Judges or a Judge by any Act (other than this Act and the District Courts Act, 1912), and in force immediately before the commencement of this Act shall continue in force as though made under this Act.

Gazettal and Parliamentary review.

162. (1) A rule shall—

(a) be published in the Gazette;

(b) take effect on and from the date of publication or a later date specified in the rule; and

(c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice.

163. Judicial notice shall be taken—

(a) of a rule made or purporting to have been made under this Act and published in the Gazette; and

(b) of the date of its publication.

Conditions precedent.

164. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

PART

PART IV.

THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT.

165. In this Part— Interpretation: Pt. IV.

"appointed place" means place for the time being specified in a proclamation under section 172;

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

166. The Court shall have jurisdiction in respect of all crimes and misdemeanours (other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955), and generally shall have the same jurisdiction and authority, civil and criminal, as each Court of Quarter Sessions had immediately before the commencement of this Act. Criminal and special jurisdiction of the Court.

167. Subject to section 194, Courts of Quarter Sessions are abolished. Abolition of Courts of Quarter Sessions.

168. (1) A reference in any instrument to a Court of Quarter Sessions shall be read and construed as a reference to the Court in its criminal and special jurisdiction. References to Courts of Quarter Sessions.

(2) In subsection (1), the reference to a Court of Quarter Sessions includes a reference to a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.

169.

169. (1) A Judge exercising the criminal and special jurisdiction of the Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions would have had, in relation to the like proceedings in a Court of Quarter Sessions, had this Act not been enacted. **Judges.**

(2) A Judge exercising the criminal and special jurisdiction of the Court shall be the sole Judge at the trial of all civil or criminal issues therein, and at the hearing of any application, or the making of any order in reference thereto, and in all other matters relating to the exercise of that jurisdiction.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall be read and construed as a reference to a Judge exercising the criminal and special jurisdiction of the Court.

170. The Clerk of the Peace has, in relation to the Court in its criminal and special jurisdiction and to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as he had, in relation to Courts of Quarter Sessions and to proceedings in those Courts, immediately before the commencement of this Act. **Clerk of the Peace.**

171. (1) The Governor may make regulations for or with respect to regulating and prescribing the practice and procedure of the Court in relation to any proceedings in the Court in its criminal and special jurisdiction. **Regulations: practice and procedure.**

(2) The regulations made under this section may provide that any provisions of this Act that would, but for this subsection, not apply to or in respect of any proceedings in the Court in its criminal and special jurisdiction shall, to the extent specified in the regulations so made, apply to or in respect of those proceedings.

(3)

(3) The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the Court in its criminal and special jurisdiction or any documents that may be or are issued by or in respect of the Court in that jurisdiction, have effect subject to the regulations made under this section.

(4) Different regulations may be made under this section to apply in different circumstances.

Appointed places.

172. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its criminal and special jurisdiction.

Directions as to sittings.

173. The Governor may, by proclamation, direct that the Court shall sit in its criminal and special jurisdiction at a specified appointed place at specified times.

General provisions as to sittings.

174. (1) Subject to this Part—

(a) the Court may sit simultaneously at different appointed places in its criminal and special jurisdiction;

(b) a Judge shall preside at such sittings of the Court in its criminal and special jurisdiction at such appointed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court in its criminal and special jurisdiction at the one appointed place.

(2)

(2) Where a sitting of the Court in its criminal and special jurisdiction is to be held and the Judge who is to preside at that sitting is not present at the time appointed for the sitting to commence, any justice of the peace may adjourn the sitting to such time as the justice deems convenient.

Hearing of appeals at proclaimed places.

175. Notwithstanding anything in this Part, a Judge sitting at any proclaimed place may, whether or not that proclaimed place is an appointed place, hear and dispose of any appeal made to the Court in its criminal and special jurisdiction.

PART V.

General Provisions.

Order to Judge or officer.

176. If a Judge or officer of the Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring the act to be done, by order direct the Judge or officer to do the act.

Privilege.

177. No privilege shall be allowed to any barrister, solicitor or other person to exempt him from the provisions of this Act.

Proclamations.

178. (1) In this section, "proclamation" means proclamation under this Act, not being the proclamation under section 2.

(2) A power conferred by any provision of this Act to make a proclamation includes the power to revoke or amend that proclamation from time to time.

(3) A proclamation shall—

(a) be published in the Gazette; and

(b) take effect on and from the date of publication or a later date specified in the proclamation.

Judges to meet and make recommendations.

179. (1) The Judges shall assemble at least once in every six months for the purpose of—

(a) considering the operation of this Act and the rules;

(b) considering the working of the offices of the Court; and

(c) inquiring into and examining any defects which appear to exist in the system of procedure or the administration of justice in the Court.

(2) The Judges shall at least once in every six months furnish a report to the Attorney-General as to what (if any) legislation or rules, regulations, by-laws or ordinances it would, in their judgment, be expedient to enact or make for the better administration of justice in the Court.

PART VI.

Repeals, Amendments, Savings and Transitional Provisions.

Division 1.—*General.*

Repeals.

180. Each Act mentioned in Schedule 1 is repealed.

Amendments.

181. Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

182.

182. A repeal made by section 180 or an amendment made by section 181 shall not revive anything not in force or existing immediately before the commencement of this Act. Non-revivor. No. 52, 1970, s. 9.

183. Except as provided in this Part, nothing in this Part limits any saving in the Interpretation Act, 1897. Operation of Interpretation Act, 1897.

DIVISION 2.—*The Civil Jurisdiction of the Court.*

184. In this Division— Interpretation: Pt. VI, Div. 2.

"district" means district referred to in section 5 of the District Courts Act, 1912;

"former Court" means a District Court established under the District Courts Act, 1912, and includes a court referred to in an instrument as "the District Court" or "the district court";

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act;

"the new Court" means the Court.

185. (1) A proclamation made under section 4 (1) of the District Courts Act, 1912, and in force immediately before the commencement of this Act, shall— Savings as to places, sittings, Judges and officers.

(a) in so far as it specifies the towns and places at which former Courts shall be holden—be deemed to be a proclamation under section 31 (2) specifying proclaimed places; and

(b)

(b) in so far as it specifies the times at which former Courts shall be holden—shall be deemed to be a proclamation under section 32 (2) directing that the new Court shall sit in its civil jurisdiction at those times at the proclaimed places specified therein.

(2) A person appointed as a judge under section 14 of the District Courts Act, 1912, and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed as a Judge under section 13 of this Act.

(3) A person appointed to sit and act as a judge under section 19A of the District Courts Act, 1912, and whose appointment continues in force immediately before the commencement of this Act, shall be deemed to have been appointed to act as a Judge under section 18 of this Act, but he shall not, by virtue of this subsection, hold office as such for a time longer than that for which he was appointed to exercise jurisdiction under section 19A of the District Courts Act, 1912.

(4) The person who was, immediately before the commencement of this Act, the Chairman of the District Court Judges shall be deemed to have been appointed as the Chief Judge under section 13 (4).

(5) A person appointed as a judge under the District Courts Act, 1912, and not holding office as such immediately before the commencement of this Act, and the widow of any such person, shall, notwithstanding anything in this Act, have the same rights as to salary, pension or otherwise which he or she would have had if this Act had not been enacted.

(6) A person holding office immediately before the commencement of this Act as the registrar of the District Court of the Metropolitan District holden at Sydney under section 21 (2) (a) of the District Courts Act, 1912, or as an

assistant

assistant registrar of that Court under section 24 of that Act shall be deemed to have been appointed as the registrar for Sydney under section 19 (2) of this Act or as an assistant registrar for Sydney under section 22 (1) of this Act, as the case may require.

(7) A person holding office immediately before the commencement of this Act as a bailiff for a former Court appointed under section 26 (3) of the District Courts Act, 1912, or an officer appointed under section 26 (4) of that Act to assist a bailiff for a former Court, shall be deemed to have been appointed under section 25 (3) of this Act as a bailiff, or under section 26 (1) of this Act as an assistant bailiff, as the case may require, of the new Court for the proclaimed place that is the place at which the former Court was ordered, under section 4 (1) of the District Courts Act, 1912, to be holden.

Pending proceedings, etc.

186. (1) Subject to the rules, and unless the Court otherwise orders—

(a) any proceedings pending in a former Court immediately before the commencement of this Act shall be continued in and disposed of by the new Court sitting at the proclaimed place that is the place at which the former Court was holden immediately before the commencement of this Act, but otherwise those proceedings shall be continued and disposed of as if this Act had not been enacted;

(b) any judgment or order of the new Court in proceedings referred to in paragraph (a) shall be enforceable in accordance with this Act and the rules;

(c) except as provided in paragraph (d), any judgment or order of a former Court shall be enforceable in accordance with this Act and the rules by the new Court sitting at the proclaimed place at which the

former

former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act;

(d) any judgment or order of a former Court shall, as regards any step taken in the enforcement of the judgment or order before the commencement of this Act, be enforceable by the new Court sitting at the proclaimed place at which the former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act, but otherwise shall be enforceable as if this Act had not been enacted; and

(e) the entitlement of any party to costs in respect of proceedings commenced before the commencement of this Act and completed after that commencement shall be ascertained as if this Act had not been enacted.

(2) For the purposes of continuing any proceedings in, or enforcing any judgment or order in, the new Court sitting at a proclaimed place, that place shall be deemed to be the proper place in relation to those proceedings or the proceedings in which the judgment was given or entered up or the order was made, as the case may require.

(3) Unless the Supreme Court in a particular case otherwise orders—

(a) Division 7 of Part III (section 126 excepted) applies to and in respect of proceedings in, or a judgment or order of, a former Court as if they or it were proceedings in, or a judgment or order of, the new Court; and

(b) any appeal made under Part VI of the District Courts Act, 1912, and pending in the Supreme Court immediately before the commencement of this Act shall be deemed to have been made under Division 7 of Part III of this Act.

References to District Court in existing instruments.

187. (1) In an instrument—

(a) subject to paragraphs (b) and (c), a reference to a former Court shall be read and construed as a reference to the new Court;

(b) subject to paragraph (c), a reference to a former Court within the jurisdiction of which, or within the district of which, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(c) a reference to a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) In an instrument, a reference to the Metropolitan District Court (however expressed) shall be read and construed as a reference to the new Court sitting at Sydney.

(3) Where under any instrument any power is vested in a former Court, the power shall be exercised by the new Court in all respects as it might have been exercised immediately before the commencement of this section, but in accordance with this Act and the rules.

188.

References to District Court judges in existing instruments.

188. (1) Subject to subsection (3), in an instrument—

(a) a reference to the Chairman of the District Court Judges shall be read and construed as a reference to the Chief Judge;

(b) subject to paragraphs (c) and (d), a reference to a District Court judge shall be read and construed as a reference to a Judge appointed under this Act;

(c) subject to paragraph (d), a reference to a District Court judge within whose jurisdiction, or within whose district, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(d) a reference to a District Court judge occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) Subject to subsections (1) (c) and (d) and (3), where under an instrument a power (other than a power to make rules) is vested in the District Court judges, or in any number of them, or a majority of them, or any one of them that power shall be exercised by the new Court in all respects as those judges or that judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.

(3)

(3) The Governor may direct by proclamation that— No. 52, 1970, s. 24 (7).

(a) subsection (1) (c) and (d) shall not apply to a reference specified in the proclamation; or

(b) subsection (2) shall not apply to any power specified in the proclamation,

and the proclamation shall have effect accordingly, but subject to subsection (5).

(4) A proclamation under subsection (3) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication of the proclamation in the Gazette.

(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation under subsection (3) has been laid before it, disallowing the proclamation or any part of it, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

189. In an instrument— References to registrars and bailiffs in existing instruments.

(a) subject to paragraphs (b) and (c), a reference to a registrar or bailiff of a former Court shall be read and construed as a reference to a registrar or bailiff of the new Court;

(b) subject to paragraph (c), a reference to the registrar or a bailiff of a former Court shall, if the reference to that former Court is, under section 187 (1) (b) or (c), to be read and construed as a reference to the new Court sitting at a proclaimed place specified

in

in section 187 (1) (b) or specified in or determined in accordance with the rules, be read and construed as a reference to the registrar or a bailiff of the new Court for that place; and

(c) a reference to a registrar or bailiff of a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the registrar or a bailiff of the new Court for the proclaimed place specified in or determined in accordance with the rules.

References to writs, etc., in existing instruments.

190. (1) In an instrument—

(a) a reference to a writ of fieri facias issued out of a former Court shall be read and construed as a reference to a writ of execution issued out of the new Court; and

(b) a reference to a writ of capias ad satisfaciendum issued out of a former Court shall be read and construed as a reference to a writ against the person issued out of the new Court.

(2) In an instrument, a reference to an action of or proceedings in ejectment in a former Court includes a reference to proceedings for possession of land under Division 8 of Part III.

Provisions as to practice and procedure in existing instruments.

191. The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the new Court or any documents that may be or are issued by or in respect of the new Court, have effect subject to the rules.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court.*

192. In this Division— Interpretation: Pt. VI, Div. 3.

"appointed place" has the meaning ascribed to it by section 165;

"former Court" means a Court of Quarter Sessions;

"the new Court" means the Court.

193. A proclamation made under section 569 of the Crimes Act 1900 appointing the times and places at which former Courts shall be held, and in force immediately before the commencement of this Act, shall— Savings as to places and sittings.

(a) in so far as it specifies the places at which former Courts shall be held—be deemed to be a proclamation under section 172 (2) specifying appointed places; and

(b) in so far as it specifies the times at which former Courts shall be held—be deemed to be a proclamation under section 173 directing that the new Court shall sit in its criminal and special jurisdiction at those times at the appointed places specified therein.

194. Notwithstanding anything in Part IV or Division 1, where any proceedings were pending in a former Court immediately before the commencement of this Act— Pending proceedings.

(a) that former Court shall continue in existence for the purpose only of the hearing and disposing of those proceedings; and

(b) those proceedings shall be heard and disposed of in all respects as if this Act had not been enacted.

SCHEDULE

SCHEDULE 1.

Sec. 180.

REPEALS.

Year and number of Act.	Short title of Act.
1901, No. 48 ..	Inter-state Debts Recovery Act, 1901.
1912, No. 23 ..	District Courts Act, 1912.
1920, No. 9 ..	Quarter Sessions Enabling Act, 1920.
1924, No. 30 ..	District Courts (Judges Pensions) Act, 1924.
1928, No. 7 ..	Supreme Court and District Courts (Judges) Act, 1928.
1932, No. 34 ..	District Courts (Validation and Amendment) Act, 1932.
1932, No. 35 ..	District Courts (Further Validation and Amendment) Act, 1932.
1936, No. 4 ..	District Courts (Amendment) Act, 1936.
1940, No. 44 ..	Attachment of Wages Limitation Act, 1940.
1949, No. 44 ..	District Courts (Amendment) Act, 1949.
1951, No. 19 ..	District Courts (Amendment) Act, 1951.
1955, No. 20 ..	District Courts (Amendment) Act, 1955.
1958, No. 11 ..	District Courts (Amendment) Act, 1958.
1961, No. 18 ..	District Courts and Small Debts Recovery (Amendment) Act, 1961.

SCHEDULE 2.

Sec. 181.

AMENDMENT OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
60 Vic. No. 23	Municipal Council of Sydney Electric Lighting Act 1896–1928	Section 1— Omit "1896–1928", insert instead ", 1896". Section 38— Omit "; and in every such proceeding the defendant may, except in the Supreme Court, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon".
1898, No. 11..	Evidence Act, 1898	Section 43B— Omit the section.
1899, No. 18..	Landlord and Tenant Act, 1899	Section 1— Omit the matter relating to Part III. Section 2A (1)— Omit "or proceedings under section seventeen of this Act". Part III— Omit the Part.
1899, No. 20..	Police Regulation Act, 1899	Section 26 (1)— Omit "and may, except in the Supreme Court, plead the general issue,".
1899, No. 24..	Stage-carriages Act, 1899	Section 14— Omit the section, insert instead the following section:— Commencement of action. 14. An action against any person for anything done in pursuance of this Act shall be commenced within three months after the act is committed and not afterwards.
1900, No. 25..	Real Property Act, 1900	Section 105 (1)— (a) Omit "the registrar or bailiff of any", insert instead "a bailiff of the"; (b) Omit "or District Court". Section 105 (2)— Omit "the registrar or bailiff of any", insert instead ", subject to section 110 (6) of the District Court Act, 1973, a registrar of the".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1900, No. 40..	Crimes Act 1900	Section 563 (1)— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue, and give the special matter in evidence thereupon". Section 563 (3)— Omit the subsection. Sections 568–571 (inclusive)— Omit the sections.
1901, No. 5 ..	Police Offences Act, 1901	Section 114 (3) and (5)— Omit the subsections.
1901, No. 8 ..	Judgment Creditors' Remedies Act, 1901	Section 13 (2)— Omit "or to the sheriff of any district". Section 17 (1)— Omit "warrant or". Section 24— Omit the section.
1901, No. 9 ..	Anatomy Act, 1901	Section 20 (2)— Omit the subsection.
1901, No. 28..	Hawkers and Pedlers Act, 1901	Section 26— (a) Omit "and in such action the defendant, except in the Supreme Court, may plead the general issue and at the trial give this Act and the special matter in evidence,"; (b) Omit ", and if any such action is in a District Court and judgment is given against the plaintiff or the plaintiff is nonsuited or discontinues such action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has in other cases".

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1901, No. 33..	Inclosed Lands Protection Act, 1901	Section 9— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue and give this Act and the special matter in evidence at the trial of such action".
1901, No. 45..	Married Women's Property Act, 1901	Section 1— Omit "Women's Property", insert instead "Persons (Property and Torts)". Section 22 (1)— Omit "within whose jurisdiction", insert instead "sitting at the proclaimed place nearest to the place where". Section 22 (3)— Omit the subsection, insert instead the following subsection:— (3) Section 128 of the District Court Act, 1973, applies to and in respect of any such application to the District Court as if the application were an action within the meaning of that Act.
1902, No. 27..	Justices Act, 1902	Section 142— Omit the section. Section 145— Omit the section.
1902, No. 66..	Pawnbrokers Act, 1902	Section 46— Omit the section.
1908, No. 31..	Pure Food Act, 1908	Section 20— Omit "Division 7 of Part III of the District Courts Act, 1912–1936, shall apply, mutatis mutandis, to any such appeal.".
1912, No. 30..	Government Railways Act, 1912	Section 144 (4)— Omit the subsection.
1912, No. 31..	Jury Act, 1912	Section 3— Omit "any district court", insert instead "the District Court". Section 5 (a)— Omit "district courts, chairmen of courts of quarter sessions", insert instead "the District Court".

SCHEDULE

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 8— Omit "or any court of quarter sessions or district court". Section 15 (1)— Omit "a district court or a court of quarter sessions", insert instead "the District Court". Section 15 (2)— Omit "district court, or in any court of quarter sessions", insert instead "the District Court". Section 22— Omit ", or a district court, or court of quarter sessions", insert instead "or the District Court". Section 27 (1)— Omit "courts of quarter sessions", insert instead "the District Court". Section 29— Insert at the end of the section the following new subsection:— (2) Subject to the provisions of this Act and of any other Act in force for the time being, where proceedings in the District Court in its civil jurisdiction are to be tried with a jury, all issues of fact in the proceedings shall be tried, and all damages and sums of money recoverable in those proceedings shall be assessed, before a Judge of that Court, by a jury consisting of four persons duly qualified according to law as jurors, and returned and chosen as hereinafter mentioned. Section 30— Omit "said court" wherever occurring, insert instead "Supreme Court". Section 30A— After "civil trial" insert "in the Supreme Court or the District Court". Section 32 (1)— Omit "courts of quarter sessions", insert instead "District Court". Section 32 (2A)— After section 32 (2) insert the following new subsection:— (2A) Every such precept returnable in the District Court in its civil juris-

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 32 (2A)—*continued.* diction shall be under the hand of the registrar for the proclaimed place at which it is returnable. Section 32 (3)— (a) Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction"; (b) Omit "a chairman of a court of quarter sessions", insert instead "a Judge of the District Court". Section 36 (2)— Omit "a court of quarter sessions", insert "the District Court in its criminal and special jurisdiction". Section 36 (3)— After section 36 (2) insert the following new subsection:— (3) No such precept returnable in the District Court in its civil jurisdiction shall require the sheriff to summon at any one time more than forty-eight or less than twelve jurors. Section 37— Omit ", or a district court, or a court of quarter sessions", insert instead "or the District Court". Section 45 (1)— Omit "a sitting of a court of quarter sessions", insert instead "the District Court". Section 57 (1)— Omit " a court of quarter sessions", insert instead "the District Court". Section 70— Omit "courts of quarter sessions", insert instead "the District Court". Section 72— Omit the section. Section 86— (a) Omit from paragraph (b) "a court of quarter sessions or by a chairman thereof", insert instead "the District Court in its criminal and special jurisdiction or by a Judge of the District Court exercising that jurisdiction";

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	(b) After paragraph (b) insert the following new paragraph:— (c) all fines imposed under this Act by the District Court in its civil jurisdiction shall be levied and recovered in accordance with the rules of the District Court.
1912, No. 73..	Irrigation Act, 1912	Section 17c (4)— Omit the subsection.
1913, No. 7 ..	Crown Lands Consolidation Act, 1913	Section 249— Omit "And in every such proceeding, other than a proceeding in the Supreme Court, the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon.".
1919, No. 41..	Local Government Act, 1919	Section 580 (8)— Omit the subsection.
1924, No. 42..	Administration of Justice Act, 1924	Section 2— (a) Omit "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901—*ss.* 8, 9."; (b) Omit "DIVISION 2.—*District Courts Act*, 1912—*s.* 10.". Part III— Omit the heading "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901.". Section 8— Omit the section. Section 9— Omit the section. Part III— Omit the heading "DIVISION 2.—*The District Courts Act*, 1912.". Section 10— Omit the section.
1930, No. 18..	Transport Act, 1930	Section 168 (4)— (a) After "recovered" insert "in the District Court"; (b) Omit "district court in such district court as the Transport Appeal Court directs", insert instead "District Court". Section 233 (4)— Omit the subsection.

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1932, No. 3 ..	Ministry of Transport Act, 1932	Section 17 (4)— Omit the subsection.
1932, No. 31..	Transport (Division of Functions) Act, 1932	Section 28 (4)— Omit the subsection.
1935, No. 47..	Maritime Services Act, 1935	Section 40 (5)— Omit the subsection.
1937, No. 35..	Statute Law Revision Act, 1937	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1939, No. 29..	Drainage Act, 1939	Section 71 (1)— After "debt" insert "or liquidated demand". Section 71 (2)— Omit the subsection.
1947, No. 41..	Jury (Amendment) Act, 1947	Section 6 (1) and (3)— Omit the subsections.
1950, No. 22..	Electricity Commission Act, 1950	Section 100 (7)— Omit the subsection.
1951, No. 11..	Sydney Harbour Transport Act, 1951	Section 34 (7)— Omit the subsection.
1951, No. 43..	Matrimonial Causes (Amendment) Act, 1951	Section 1 (3)— Omit the subsection. Section 2 (1)— Omit the subsection.
1953, No. 41..	Judges' Pensions Act, 1953	Section 2— From the definition of "Judge" omit "Chairman of the District Court Judges, District Court judge", insert instead "Chief Judge or Judge of the District Court".

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1953, No. 41—*continued*	Judges' Pensions Act, 1953—*continued*	Section 2B— After section 2A insert the following new section:— Continuity of judicial office in the District Court. 2B. The office of Chairman of the District Court Judges and of District Court judge under the District Courts Act, 1912, shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, under the District Court Act, 1973. Section 8 (3)— Omit "or an acting judge of any District Court", insert instead "an acting judge of a District Court (under the District Courts Act, 1912), or an acting Judge of the District Court (under the District Court Act, 1973)". Section 13 (2)— Omit the subsection.
1954, No. 36..	Grain Elevators Act, 1954	Section 56 (7)— Omit the subsection.
1957, No. 28..	Attachment of Wages Limitation Act, 1957	Section 3— Omit the section.
1961, No. 29..	Industrial Arbitration (Basic Wage) Amendment Act, 1961	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1963, No. 59..	State Planning Authority Act, 1963	Section 70 (7)— Omit the subsection.
1964, No. 37..	Industrial Arbitration (Amendment) Act, 1964	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 12..	Supreme Court and Circuit Courts (Amendment) Act, 1965	Section 8— Omit the section. Schedule— Omit so much as relates to the District Courts Act, 1912.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1965, No. 32..	Law Reform (Miscellaneous Provisions) Act, 1965	Section 3— Omit so much as relates to Parts II, VII, VIII. Part II— Omit the Part. Section 13— Omit the section. Section 14— Omit the section. Part VII— Omit the Part. Part VIII— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 33..	Decimal Currency Act, 1965	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1967, No. 35..	National Parks and Wildlife Act, 1967	Section 45 (1)— After "debt" insert "or liquidated demand". Section 45 (2)— Omit the subsection.
1967, No. 86..	Industrial Arbitration (Basic Wage) Amendment Act, 1967	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 3 ..	Administration of Justice Act, 1968	Section 3— Omit so much as relates to Part IX. Part IX— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968	Section 44 (7)— Omit the subsection.
1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968	Section 53 (9)— Omit the subsection.

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 11..	Courts of Petty Sessions (Civil Claims) Act, 1970	Section 12 (2)— Omit "a District Court having jurisdiction in the matter under section seven of the District Courts Act, 1912", insert instead "the District Court sitting at the nearest proclaimed place to the place— (a) where the defendant, or any one of two or more defendants, is resident or carries on his business; or (b) where the cause of action arose". Section 12 (3)— Omit "District Court to which the action is ordered to be transferred", insert instead "registrar of the District Court for the proclaimed place mentioned in the order". Section 12 (4)— (a) Omit "a District Court", insert instead "the District Court"; (b) Omit "District Courts Act, 1912", insert instead "District Court Act, 1973"; (c) Omit "that District Court", insert instead "the District Court". Section 12 (5)— Omit "a District Court", insert instead "the District Court".
1970, No. 29..	Dairy Industry Authority Act, 1970	Section 81 (9)— Omit the subsection.
1970, No. 52..	Supreme Court Act, 1970	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 60..	Minors (Property and Contracts) Act, 1970	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 95..	State Pollution Control Commission Act, 1970	Section 30 (9)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 96..	Summary Offences Act, 1970	Section 65 (5)— Omit the subsection.
1970, No. 97..	Waste Disposal Act, 1970	Section 54 (9)— Omit the subsection.

BY AUTHORITY
V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 21 *March,* 1973.

New South Wales

ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

* *

Act No. 9, 1973.

An Act to establish a District Court of New South Wales; to provide for the appointment of, and the powers, authorities, duties and functions of, Judges and other officers of the Court; to empower the Court to hear and dispose of certain civil and criminal proceedings; to abolish the several District Courts and Courts of Quarter Sessions; to repeal the District Courts Act, 1912, and certain other Acts; to amend the Crimes Act 1900 and certain other Acts; and for purposes connected therewith. [Assented to, 10th April, 1973.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "District Court Act, 1973".

Commencement.

2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–7.

PART II.—THE DISTRICT COURT OF NEW SOUTH WALES—*ss.* 8–18.

DIVISION 1.—*Establishment of the Court*—*ss.* 8–11.

DIVISION 2.—*Judges*—*ss.* 12–18.

PART III.—THE CIVIL JURISDICTION OF THE COURT —*ss.* 19–164.

DIVISION 1.—*Officers and General Provisions*—*ss.* 19–43.

Subdivision 1.—*Registrars*—*ss.* 19–24.

Subdivision 2.—*Bailiffs*—*ss.* 25–30.

Subdivision 3.—*Sittings of the Court*—*ss.* 31–39.

Subdivision

Subdivision 4.—*Change of venue—s.* 40.

Subdivision 5.—*Parties—ss.* 41, 42.

Subdivision 6.—*Right of appearance—s.* 43.

DIVISION 2.—*Actions: Jurisdiction—ss.* 44–51.

Subdivision 1.—*General jurisdiction in relation to actions—ss.* 44–48.

Subdivision 2.—*Splitting and dividing of causes of action and abandonment—ss.* 49, 50.

Subdivision 3.—*Jurisdiction by consent—s.* 51.

DIVISION 3.—*Actions: Procedure—ss.* 52–83.

Subdivision 1.—*General—s.* 52.

Subdivision 2.—*Commencement of actions—ss.* 53–55.

Subdivision 3.—*Defences—s.* 56.

Subdivision 4.—*Order for judgment and judgment by default—ss.* 57, 58.

Subdivision 5.—*Judgment by confession or agreement—ss.* 59–62.

Subdivision 6.—*Arbitration—s.* 63.

Subdivision 7.—*Witnesses, evidence and ancillary matters—ss.* 64–70.

Subdivision 8.—*Trial and jury—ss.* 71–80.

Subdivision 9.—*Judgments and orders—ss.* 81–83.

DIVISION 4.—*Actions: Enforcement of Judgments—ss.* 84–114.

Subdivision 1.—*General—ss.* 84–86.

Subdivision 2.—*Payment of judgment debt—ss.* 87–89.

Subdivision 3.—*Examination of judgment debtor—ss.* 90–96.

Subdivision

Subdivision 4.—*Attachment of debts*—*ss.* 97–106.

Subdivision 5.—*Writ of execution*—*ss.* 107–112.

Subdivision 6.—*Writ against the person*—*ss.* 113, 114.

DIVISION 5.—*Actions*: *Interpleader*—*ss.* 115–118.

DIVISION 6.—*Actions*: *Costs*—*ss.* 119–124.

DIVISION 7.—*Actions*: *New Trial and Appeal*—*ss.* 125–131.

DIVISION 8.—*Miscellaneous Jurisdiction*—*ss.* 132–142.

Subdivision 1.—*General*—*s.* 132.

Subdivision 2.—*Possession of land and equity proceedings*—*ss.* 133–139.

Subdivision 3.—*Temporary injunctions*—*ss.* 140–142.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court*—*ss.* 143–148.

Subdivision 1.—*Transfer of proceedings from Supreme Court*—*ss.* 143, 144.

Subdivision 2.—*Transfer of proceedings to Supreme Court*—*ss.* 145–148.

DIVISION 10.—*Miscellaneous Provisions*—*ss.* 149–160.

DIVISION 11.—*Rules*—*ss.* 161–164.

PART IV.—THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT—*ss.* 165–175.

PART V.—GENERAL PROVISIONS—*ss.* 176–179.

PART VI.—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS—*ss.* 180–194.

DIVISION 1.—*General*—*ss.* 180–183.

DIVISION

DIVISION 2.—*The Civil Jurisdiction of the Court—ss.* 184–191.

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court—ss.* 192–194.

SCHEDULES.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation: general.

"action" means action in the Court, but does not include any proceedings under Division 8 of Part III or under Part IV;

"admitted set-off", in relation to an action, means set-off admitted by the plaintiff in the statement of claim lodged by him to commence the action or, where a defendant pleads a cross-claim, by the defendant in the prescribed notice of the cross-claim;

"barrister" means person who is on the roll of barristers in the Supreme Court;

"Chief Judge" means Chief Judge of the Court;

"corporation" includes any body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person;

"file", in relation to any proceedings, means lodge with the registrar for the proper place in relation to the proceedings, for inclusion in the record of the Court;

"Judge" means Judge of the Court;

"judgment", in relation to an action, means judgment given or entered up in the action;

"land" includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate

or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity;

"minor" means person under the age of eighteen years;

"officer", in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"prescribed" means prescribed by this Act or the rules;

"proceedings" means proceedings in the Court;

"proclaimed place" means place for the time being specified in a proclamation under section 31;

"proper place", in relation to any proceedings in the Court in its civil jurisdiction—

(a) where there has been no change of venue in respect of the proceedings—means the proclaimed place at which the proceedings were commenced;

(b) where there has been only one change of venue in respect of the proceedings—means the proclaimed place to which the venue was changed; or

(c) where there have been two or more changes of venue in respect of the proceedings—means the proclaimed place to which the venue was last changed;

"registry", in relation to a proclaimed place, means the office of the registrar for the proclaimed place;

"rules" means rules made under this Act;

"solicitor" means attorney, solicitor and proctor of the Supreme Court;

"statement of claim" means ordinary statement of claim or statement of liquidated claim, as referred to in section 53;

"the Court" means the District Court of New South Wales;

"the registrar", in relation to any proceedings, means the registrar for the proper place in relation to the proceedings;

"writ against the person" means writ against the person issued under section 113;

"writ of execution" means writ of execution issued under section 107.

(2) A reference in this Act—

(a) to the giving of a judgment is a reference to the recording and delivering of a judgment, not being a judgment under section 58, 60 or 61; and

(b) to the entering up of a judgment is a reference to the entering up of a judgment in accordance with section 58, 60 or 61.

(3) A reference in this Act to the commencement of proceedings at a proclaimed place (however expressed) is a reference to the commencement of those proceedings by the lodging of the statement of claim or other document commencing the proceedings with the registrar for that place.

(4) A reference in this Act to the issue of a document at a proclaimed place (however expressed) is a reference to the issue of that document by the registrar for that place.

(5) A reference in this Act to a stay of proceedings (however expressed) includes a reference to a stay of enforcement of the judgment arising from the proceedings.

(6) A reference in this Act to a stay of enforcement of a judgment includes a reference to a stay of the issue of—

(a) an examination summons under section 91 (1);

(b) a warrant under section 92 (4); and

(c) a charging order under the Judgment Creditors' Remedies Act, 1901,

in respect of the judgment debt.

Interpretation: nearest proclaimed place.

5. (1) A reference in this Act to the nearest proclaimed place to another place (however expressed) is a reference to the proclaimed place the distance between the principal registry for which and that other place is shorter than the distance between any other principal registry and that other place.

(2) In subsection (1)—

"distance" means distance computed in accordance with the rules;

"principal registry", in relation to a proclaimed place, means—

(a) where there is only one registry for the proclaimed place—that registry; or

(b) where there are two or more registries for the proclaimed place—the registry specified in, or determined in accordance with, the rules as being the principal registry for the proclaimed place.

(3) The Governor may, at his discretion, by proclamation, specify an address or a place at which the principal registry for a proclaimed place shall be deemed to be situated,

and that principal registry shall, for the purposes of subsection (1), be deemed to be situated at the address or place so specified, notwithstanding that it may be situated elsewhere.

Order on terms. No. 52, 1970, s. 21.

6. Where under this Act or the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

Application of certain provisions of this Act.

7. The provisions of Part III and Division 2 of Part VI and the rules—

(a) apply to and in respect of proceedings in the Court in its civil jurisdiction; and

(b) except as provided by Part IV, do not apply to or in respect of proceedings in the Court in its criminal and special jurisdiction.

PART II.

THE DISTRICT COURT OF NEW SOUTH WALES.

DIVISION 1.—*Establishment of the Court.*

The Court.

8. (1) There shall be a District Court of New South Wales.

(2) The Court shall be a court of record.

(3) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

9.

Jurisdiction of the Court generally.

9. (1) The Court shall have a civil jurisdiction, consisting of—

(a) its jurisdiction conferred by Part III; and

(b) the jurisdiction conferred by or under any other Act or law on the Court, not being its jurisdiction referred to in subsection (2).

(2) The Court shall have a criminal and special jurisdiction, consisting of—

(a) its jurisdiction conferred by Part IV; and

(b) the jurisdiction conferred by or under any other Act or law on the Court in its criminal and special jurisdiction, its criminal jurisdiction or its special jurisdiction.

State-wide jurisdiction.

10. The Court, wherever sitting, shall, subject to this Act, have jurisdiction throughout the whole of New South Wales.

Single Judge to constitute the Court.

No. 52, 1970, s. 40.

11. (1) All proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the Jury Act, 1912, be heard and disposed of before a Judge, who shall constitute the Court.

(2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before a registrar or other officer of the Court.

DIVISION 2.—*Judges.*

Composition of the Court.

12. The Court shall be composed of a Chief Judge and such other Judges as the Governor may from time to time appoint.

13.

13. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment and qualification of Judges.

(2) A person is qualified to be appointed as a Judge if he is—

(a) a barrister of not less than five years' standing;

(b) a solicitor of not less than seven years' standing; or

(c) a barrister or a solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(3) A barrister or solicitor shall not be appointed to be a Judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately preceding his appointment.

(4) The Governor may, by the commission of a person's appointment as a Judge or by a subsequent commission under the public seal of the State, appoint a Judge to be Chief Judge.

(5) Subject to subsection (6), the Chief Judge shall hold office as Chief Judge so long as he holds office as a Judge.

(6) With the approval of the Governor, the Chief Judge may resign his office as Chief Judge without resigning his office as a Judge.

(7) A Judge shall, while he holds office as such, be deemed to have been appointed a justice of the peace.

Judge's tenure.

14. (1) Subject to the Judges Retirement Act, 1918, a Judge shall hold his office during ability and good behaviour.

(2) The Governor may remove a Judge for inability or misbehaviour.

(3) A Judge shall not be removed from office under subsection (2) unless, before being so removed, he has been given twenty-one days' notice of the intention to remove him and he has within that time been given an opportunity of making representations to the Governor and of being heard before the Governor in Council.

(4) A Judge shall not practise as a barrister or solicitor, or be directly or indirectly concerned in the practice or profession of a barrister or solicitor, or be capable of being summoned, or elected, or of sitting, as a member of Parliament.

Salaries.

15. (1) The annual salary—

(a) of the Chief Judge shall be $24,650; and

(b) of any other Judge shall be $22,580.

(2) The salary payable to each Judge in accordance with subsection (1), together with any statutory or other allowance, shall be paid to him so long as he continues to hold office.

Vacancy in office of or absence of Chief Judge.

16. (1) Where there is a vacancy in the office of Chief Judge, or the Chief Judge is absent from his duties, the senior of the other Judges willing to act as Chief Judge shall, if there is no Acting Chief Judge appointed under section 17, act as Chief Judge, and shall, while so acting, have the powers and authorities and fulfil the duties of the Chief Judge.

(2) For the purposes only of subsection (1)—

(a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act or the District Courts Act, 1912, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge; and

(b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commissions or, failing any such assignment, according to the order of their being sworn.

Acting Chief Judge.

17. (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his duties.

(2) While holding office, the Acting Chief Judge shall have the powers and authorities and fulfil the duties of the Chief Judge, and shall receive a salary and allowances at the rate provided for the Chief Judge.

Acting Judges.

18. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding six months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed, for the time and subject to the conditions or limitations specified in his commission, shall have the powers and authorities and fulfil the duties of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.

PART

PART III.

THE CIVIL JURISDICTION OF THE COURT.

DIVISION 1.—*Officers and General Provisions.*

Subdivision 1.—*Registrars.*

Registrars.

19. (1) There shall be a registrar of the Court for each proclaimed place.

(2) The registrar for Sydney, and for any other proclaimed place specified for the purposes of this subsection by the Minister by order published in the Gazette, shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(3) The registrar for any proclaimed place not referred to in subsection (2) shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at that place, or if there is no such person, shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at some other place specified for the purposes of this subsection by the Minister by order published in the Gazette.

Consent orders.

20. Except where otherwise expressly provided by this Act or the rules, the registrar for the proper place in relation to any proceedings may exercise the power of the Court to make any order in the proceedings which the Court may make, being an order consented to—

(a) by the parties to the application for the order; and

(b) by any other persons who will be required to comply with the order or to suffer anything to be done under the order.

21. (1) The registrar for Sydney may, except where a Judge otherwise orders or the rules otherwise provide, exercise, in or in respect of proceedings in relation to which the proper place is Sydney— Powers of the registrar for Sydney.

(a) the powers of the Court under section 68 (2); and

(b) the powers of the Court to make—

(i) orders for substituted service of process;

(ii) orders in respect of the joinder, misjoinder and nonjoinder of parties;

(iii) orders in respect of the amendment of documents;

(iv) orders that the trial of proceedings be expedited; and

(v) orders that proceedings be heard together.

(2) The registrar for Sydney shall have, and may exercise concurrently with the registrar for any other proclaimed place specified for the purposes of this subsection by the Governor by order published in the Gazette, such of the powers, authorities, duties and functions of the registrar for that other proclaimed place as may be so specified.

(3) Any power, authority, duty or function conferred upon the registrar for Sydney by this section is additional to those otherwise conferred upon him.

22. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint one or more assistant registrars for a proclaimed place. Assistant registrars.

(2) If the Governor by proclamation so directs, the person for the time being holding office as, or discharging the functions of, clerk of petty sessions for a place specified in the proclamation (whether or not that place is a proclaimed place) shall be an assistant registrar for the proclaimed place specified in the proclamation.

23.

Powers, etc., of assistant registrars.

23. (1) An assistant registrar for a proclaimed place shall have and may exercise and discharge such of the powers, authorities, duties and functions of the registrar for that place as may be specified in the rules for the purposes of this subsection.

(2) Any thing done or omitted to be done by an assistant registrar for a proclaimed place in the exercise or discharge of his powers, authorities, duties and functions under this Act shall, for the purposes of this Act, have the same effect as if it had been done or omitted by the registrar for that proclaimed place.

(3) Nothing in this section affects the powers, authorities, duties and functions of any registrar.

Registrar not to act as bailiff.

24. A registrar or an assistant registrar shall not be appointed or act as a bailiff or assistant bailiff.

Subdivision 2.—*Bailiffs.*

Bailiffs.

25. (1) There shall be at least one bailiff of the Court for each proclaimed place.

(2) If the Governor by proclamation so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place specified in the proclamation shall be a bailiff of the Court for such proclaimed place or proclaimed places as may be specified in the proclamation.

(3) The Chief Judge may, whether or not there is a bailiff for a proclaimed place by virtue of subsection (2), by order in writing appoint persons to be bailiffs of the Court for that proclaimed place.

Assistant bailiffs.

26. (1) A bailiff for a proclaimed place may, by instrument in writing, appoint a sufficient number of persons to be assistant bailiffs of the Court for that proclaimed place.

(2) An assistant bailiff may be dismissed or suspended from office as such by the Chief Judge or any successor of the bailiff who appointed him, as well as by that bailiff.

Duties of bailiffs and assistant bailiffs.

27. (1) A bailiff for a proclaimed place shall, if required by the Judge presiding thereat to do so, attend any sitting of the Court at that place.

(2) The bailiff for a proclaimed place shall, if required by the registrar for that place to do so—

(a) execute any warrant or writ issued out of the Court; or

(b) serve any other document,

whether or not that place is the proper place in relation to the proceedings to which that warrant, writ or other document relates, but where there are two or more bailiffs for that place, the warrant, writ or other document may be executed or served by any one of them.

(3) It shall be the duty of an assistant bailiff for a proclaimed place to assist the bailiff for that place, as directed by the bailiff.

(4) The bailiffs and assistant bailiffs shall in the execution of their duties conform to the rules and, subject to the rules, to the order and direction of any Judge.

(5) A bailiff who undertakes, or is required to undertake, the execution or service of any warrant, writ or other document shall, in respect thereof, be responsible to any party for all the acts and defaults of himself and of any assistant bailiff assisting him in like manner as the sheriff is responsible for the acts and defaults of himself and his officers.

28.

Remuneration of bailiffs and assistant bailiffs.

28. (1) A bailiff appointed under section 25 (3) shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by a bailiff.

(2) An assistant bailiff shall be entitled, in respect of any service performed by him as required by or under this Act, to receive out of the Consolidated Revenue Fund and retain for his own use the amount of any fee prescribed by the regulations made under section 150 as payable by a party in respect of that service when performed by an assistant bailiff.

Bailiff not to act as registrar.

29. A bailiff or assistant bailiff shall not be appointed or act as a registrar or assistant registrar.

Obstructing bailiffs.

30. A person shall not assault, resist, interrupt or obstruct a bailiff or assistant bailiff in the exercise of any of his powers, authorities, duties or functions under this Act, or rescue or attempt to rescue any property seized or taken by a bailiff or assistant bailiff.

Penalty : $200 or imprisonment for six months, or both.

Subdivision 3.—*Sittings of the Court.*

Proclaimed places.

31. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its civil jurisdiction, and one of those proclaimed places shall be Sydney.

32. (1) In this section, "year" means any period of twelve months ending on the thirty-first day of December. Directions as to sittings at proclaimed places.

(2) The Governor may, if in his opinion it is expedient to do so, by proclamation, direct that the Court shall, during a specified year, sit in its civil jurisdiction at a specified proclaimed place at specified times.

(3) Where there is no direction under subsection (2) that the Court shall, during a particular year, sit at a particular proclaimed place, the Chief Judge may, if in his opinion it is expedient to do so, by order in writing—

(a) direct that the Court shall, during that year, sit in its civil jurisdiction at that place at specified times; or

(b) direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place shall be continued by the Court sitting at some other proclaimed place specified in the order,

and, while a direction under paragraph (b) remains in force, the proceedings to which it relates shall, if continued, be continued accordingly.

(4) A direction under subsection (2) or (3) may be given in respect of a particular year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

(5) Where a direction is given under subsection (2) having effect, during a particular year, in respect of a particular proclaimed place, a previous direction—

(a) under subsection (3) (a) having effect, during that year, in respect of that proclaimed place; or

(b) under subsection (3) (b) having effect, during that year, in respect of proceedings the proper place in relation to which is that proclaimed place,

shall cease to have effect.

General provisions as to sittings.

33. (1) Subject to this Part, sittings of the Court shall be arranged by the Chief Judge.

(2) Subject to this Part—

(a) the Court may sit simultaneously at different proclaimed places;

(b) a Judge shall preside at such sittings of the Court at such proclaimed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court at the one proclaimed place.

(3) Where a sitting of the Court is directed to be held at a proclaimed place at a time specified under section 32, the registrar for that place shall—

(a) if the Chief Judge so directs; or

(b) if for any reason it is not practicable to be held at that time,

adjourn the sitting to such time as the Chief Judge nominates or, if the Chief Judge does not nominate a time, to such time as the registrar deems convenient.

Permanent substitution of proclaimed place.

34. (1) Where a place ceases to be a proclaimed place by reason of the revocation or amendment of a proclamation made under section 31, the Governor may, by proclamation, direct that—

(a) all proceedings (including proceedings before a registrar or any other officer of the Court) pending before the Court at that place; and

(b) any unsatisfied judgment or order of the Court in proceedings the proper place in relation to which was that place,

may

may be continued or enforced by the Court sitting at such other place as may be specified in the proclamation, and the proceedings shall, if continued, be continued accordingly or the judgment or order enforced accordingly, as the case may require.

(2) The Governor may, in any such proclamation, direct that the records of the Court at the place that has so ceased to be a proclaimed place shall be removed at or within a time stated in the proclamation to the registry for the other place specified therein.

(3) A direction under subsection (1) shall, for the purposes of the definition of "proper place" in section 4 (1), have effect as if it were an order for a change of venue under section 40 in respect of the proceedings to which it relates to the other place specified in the proclamation.

Temporary substitution of proclaimed place.

35. Where the Governor is of the opinion that it is inexpedient or impracticable for the Court to sit at a proclaimed place but that that place should continue to be specified in a proclamation under section 31, he may, by proclamation, direct that all proceedings (other than proceedings before a registrar or any other officer of the Court) the proper place in relation to which is that place may be continued by the Court sitting at such other place as may be specified in the proclamation, and, while the direction remains in force, the proceedings shall, if continued, be continued accordingly.

Adjournment to another proclaimed place.

36. Where all parties appearing in proceedings the hearing of which has commenced before him in court consent, a Judge may direct that those proceedings be continued before him at another proclaimed place at which he is, under section 33 (2) (b), authorised to sit.

Chambers.

37. A Judge may make in chambers any order in respect of any proceedings which he could lawfully make in court and which he considers may be properly made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere.

Reservation of judgment or decision.

38. (1) Where in any proceedings a Judge reserves his judgment or his decision on any question of fact or law, he may—

(a) give his judgment or decision at the proper place in relation to those proceedings or at any other place at which he is authorised by this Act to hear or dispose of those proceedings, at any time, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a); or

(b) draw up in writing his judgment or decision, sign it and forward it to the registrar for that proper place.

(2) Where a registrar receives a judgment or decision forwarded to him under subsection (1) (b), he shall, after giving notice to the parties to the proceedings, read the judgment or decision at the place for which he is registrar at a convenient time specified in the notice, whether or not that time is specified in respect of that place under section 32 (2) or (3) (a).

(3) A judgment or decision given by a Judge under subsection (1) (a) or read by a registrar under subsection (2) shall take effect on the day on which it is so given or read and shall be as valid as if given by the Judge at the hearing of the proceedings to which the judgment or decision relates.

39.

39. Nothing contained in or done under section 32, 35, 36 or 37 has, for the purposes of the definition of "proper place" in section 4 (1), effect as a change of venue, unless the Court orders a change of venue under section 40. Proper place not affected.

Subdivision 4.—Change of venue.

40. (1) Where— Change of venue.

(a) it appears that a fair or unprejudiced trial of any issue cannot otherwise be had; or

(b) for any other reason it appears expedient to the Court to do so,

the Court may, on terms, change the venue of any proceedings.

(2) Where the venue of any proceedings is changed, the registrar for the proclaimed place from which the venue is changed shall forthwith deliver or transmit by post the whole record of the proceedings to the registrar for the proclaimed place to which the venue is changed.

Subdivision 5.—Parties.

41. (1) Subject to this Act and the rules, where a plaintiff has a cause of action against two or more persons having a joint liability, it shall be sufficient if any one or more of those persons is or are served with process in any proceedings, and judgment in the proceedings may be given or entered up and enforced against the person or persons so served notwithstanding that others jointly liable have not been served or sued, or are not within New South Wales. Joint liability.

(2) The provisions of section 97 of the Supreme Court Act, 1970, apply to and in respect of a judgment given or entered up in proceedings in the Court in the same way as they apply to and in respect of a judgment given in proceedings in the Supreme Court.

42.

Executors and administrators.

42. An executor or administrator may sue or be sued in any proceedings in like manner as if he were a party suing or being sued in his own right, and judgment in the proceedings and enforcement of the judgment shall be as prescribed.

Subdivision 6.—Right of appearance.

Right of appearance.

43. (1) A party to any proceedings may appear—

(a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained; or

(b) if no barrister or solicitor is so retained and—

(i) if that party is a natural person—by himself; or

(ii) if that party is a corporation—by an officer of the corporation authorised in that behalf by the corporation in accordance with the rules,

or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.

(2) A person appearing in any proceedings may address the Court and examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in the Court or before a registrar.

(4) Subsection (3) does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(5) No amount paid to a person who appears in any proceedings, and who is not a barrister or solicitor retained as mentioned in subsection (1), shall be allowed as costs between party and party.

(6) Subsection (2) has effect subject to this Act and the rules and to any direction given by the Court under section 156 (2).

DIVISION 2.—*Actions: Jurisdiction.*

Subdivision 1.—*General jurisdiction in relation to actions.*

44. (1) Subject to this Act, the Court shall have jurisdiction to hear and dispose of— Actions.

(a) any personal action at law where the amount claimed does not exceed $10,000, whether on a balance of account or after an admitted set-off or otherwise; or

(b) any action brought to recover an amount not exceeding $10,000, 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.

(2) Without affecting the generality of the provisions of subsection (1) (a), a reference in those provisions to a personal action at law includes a reference to an action for the detention of goods.

(3) For the purposes of subsection (1) (a), the amount claimed in an action for the detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.

Minors.

45. A minor to whom any wages or other sum arising out of the course of his employment are or is alleged to be due may sue for and recover the wages or sum in the Court in the same manner as if he were of full age.

Ancillary equitable relief: injunctions.

46. (1) Without affecting the generality of Division 8, the Court shall, in any action, have power to grant any injunction (whether interlocutory or otherwise) which the Supreme Court might have granted if the action were proceedings in the Supreme Court.

(2) In relation to the power of the Court to grant an injunction under this section—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c) shall, subject to the rules, extend to the enforcement of any order of the Court made in connection with proceedings for the grant of the injunction.

(3) Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of an injunction under this section; and

(b) any other matter necessary or convenient for giving effect to this section.

Cause of action or defendant outside the State.

47. (1) The Court shall have jurisdiction in accordance with this Act to hear and dispose of an action—

(a) notwithstanding that part of the cause of action arose outside New South Wales, provided a material part of the cause of action arose within New South Wales;

(b) notwithstanding that the whole cause of action arose outside New South Wales, provided the defendant was resident within New South Wales at the time of service of the statement of claim in the action; or

(c)

(c) notwithstanding that the defendant is not within New South Wales, provided the whole cause of action or a material part of the cause of action arose within New South Wales and provided the defendant was within a State or a part of the Commonwealth (within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended) at the time of service of the statement of claim in the action.

(2) Subsection (1) (c) applies whether the defendant has or has not ever been resident or carried on business in New South Wales.

(3) In this section, "defendant" includes, where there are two or more defendants, any one of those defendants.

Miscellaneous limitations on jurisdiction.

48. (1) An action in which the amount claimed does not exceed $20 and which could have been commenced in a court of petty sessions shall not be commenced in the Court except with the leave of the Court, which leave may be given on terms.

(2) Subject to subsection (3), the Court shall not have jurisdiction in an action in which title to land the value of which is more than $10,000 is in question.

(3) If the title to land the value of which is more than $10,000 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

of the Court shall not be evidence of title between the parties or their privies in other proceedings in the Court or in any proceedings in any other court.

(4) Without affecting Division 8, the Court shall not have jurisdiction in actions for possession of land by virtue of this Part.

Subdivision 2.—Splitting and dividing of causes of action and abandonment.

49. (1) Where a person splits or divides any cause of action against another person— Actions not to be split or divided.

(a) so as to bring an action for part of the amount for which an action may be brought on that cause; or

(b) so as to plead a cross-claim for part of the amount for which an action may be brought on that cause,

and judgment is given or entered up, or a final order is made, on that action or cross-claim, that other person is entitled to judgment in any other action brought or cross-claim pleaded on that cause (whether brought or pleaded in the Court or brought, taken or pleaded in any other court).

(2) Where a person has given two or more bills of exchange, promissory notes, bonds or other securities for any claim by another person, whether or not the amount of that claim exceeds $10,000, that other person may, notwithstanding the provisions of subsection (1) but subject to any other provision of this Act, bring an action on, or plead by way of cross-claim in the Court, each of those securities as if each of them formed a distinct cause of action.

50.

Abandonment.

50. A plaintiff who has a cause of action for more than $10,000 may abandon the excess by stating the abandonment in the statement of claim by the lodging of which an action is commenced on that cause of action, and where the abandonment is so stated—

(a) the plaintiff's claim shall be reduced by the amount of the excess and the plaintiff shall, on proving his case, recover to an amount not exceeding $10,000;

(b) judgment in the action shall be in full discharge of all demands in respect of that cause of action; and

(c) entry of the judgment in the records of the Court shall be made accordingly.

Subdivision 3.—*Jurisdiction by consent.*

Consent jurisdiction.

51. (1) In this section, "memorandum of consent", in relation to an action, means a document signed—

(a) where there is only one defendant in the action—by the defendant or his solicitor; or

(b) where there are two or more defendants in the action—by each defendant or his solicitor,

in which it is stated that the defendant, or each of the defendants, consents to the action being tried in the Court and is aware that, unless the memorandum is filed in accordance with subsection (2), the Court will not have jurisdiction to hear and dispose of the action.

(2) Where, but for this subsection, the Court would not have jurisdiction to hear and dispose of an action by reason only of the fact that the amount claimed exceeds $10,000, the Court shall have jurisdiction to hear and dispose

of

of that action if, together with the statement of claim by the lodging of which the action is commenced, the plaintiff files a memorandum of consent in respect of the action.

DIVISION 3.—*Actions: Procedure.*

Subdivision 1.—General.

Actions to be heard at proper place.

52. Except where otherwise expressly provided by or under this Act, an action and any proceedings ancillary to that action shall be heard and disposed of by the Court sitting at the proper place in relation to that action.

Subdivision 2.—Commencement of actions.

Manner of commencement of actions.

53. (1) An action shall be commenced by the lodging by the plaintiff with a registrar—

(a) except in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim; or

(b) in the case of an action for the recovery of a debt or liquidated demand—of an ordinary statement of claim or a statement of liquidated claim,

for issue by the registrar.

(2) Proceedings ancillary to an action shall be commenced in the prescribed manner.

Place of commencement of action.

54. An action may be commenced at any proclaimed place.

55.

Relevant places.

55. (1) In this section—

"defendant" includes, where there are two or more defendants, any one of those defendants;

"relevant place", in relation to an action, means each of the following places :—

(a) the place where the defendant is resident;

(b) the place where the defendant carries on his business; and

(c) the place where the cause of action arose,

but does not include any place outside New South Wales.

(2) Where the proclaimed place at which an action is commenced is not the nearest proclaimed place to a relevant place, the defendant may, if he files the notice of the grounds of his defence under section 56 within the time prescribed for the purposes of this subsection, file within that time an affidavit by the defendant or his solicitor or agent specifying all the relevant places and the nearest proclaimed place to each of them.

(3) Where the defendant files the notice of the grounds of his defence and an affidavit in accordance with subsection (2), the plaintiff may, within the time prescribed for the purposes of this subsection, file—

(a) a notice, signed by the plaintiff or his solicitor or agent, selecting as the venue of the action one of the proclaimed places specified in the defendant's affidavit; or

(b) an affidavit by the plaintiff or his solicitor or agent stating that a notice under paragraph (a) is not filed on the ground that—

(i) the proclaimed place at which the action was commenced is the nearest proclaimed place to a relevant place;

(ii) at least one of the places specified as relevant places in the affidavit under subsection (2) is not a relevant place;

(iii) not all of the relevant places were specified in the affidavit under subsection (2); or

(iv) the place specified in the affidavit under subsection (2) as being the nearest proclaimed place to a relevant place specified therein is not the nearest proclaimed place,

and if a notice under paragraph (a) or affidavit under paragraph (b) is not so filed, the plaintiff shall, at the expiration of that prescribed time, be deemed to have discontinued his action.

(4) The filing of a notice in accordance with subsection (3) shall have the same effect as if the Court had ordered a change of venue under section 40 to the proclaimed place selected in the notice.

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either order a change of venue under section 40 to such proclaimed place as the Court thinks proper (whether or not that place is a relevant place) or direct that there shall be no such change of venue.

Subdivision 3.—Defences.

56. (1) A defendant in an action commenced by the lodging of an ordinary statement of claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor. **Defences.**

(2)

(2) A defendant in an action commenced by the lodging of a statement of liquidated claim may at any time before judgment file, in duplicate, notice of the grounds of his defence, signed by the defendant or his solicitor, and an affidavit verifying the grounds or verifying such facts as the Court may, in the special circumstances of the case, deem sufficient.

(3) The registrar shall, as soon as practicable after the filing of any notice of grounds of defence under this section, give or send by post a copy of the notice and any affidavit filed with it to the plaintiff or his solicitor.

(4) A defendant shall not at the trial of an action, except by consent of the plaintiff or by leave, given on terms, of the Court, set up any ground of defence not included in a notice of grounds of defence filed by him under this section.

(5) A defendant shall not, by reason of having filed a notice of the grounds of his defence to an action, be deemed to have waived any objection he may have on the ground of want of jurisdiction in the Court to try the action.

Subdivision 4.—Order for judgment and judgment by default.

Order for judgment.

57. (1) Where, in an action commenced by the lodging of an ordinary statement of claim—

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (1); and

(b) judgment has not been given or entered up in the action,

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing an affidavit of service of the statement of claim on that defendant, have an order, to be called an order for judgment, made by the Court or the registrar against that defendant.

(2)

(2) Subject to subsection (4), where an order for judgment is made in an action against a defendant—

(a) that defendant shall be deemed to have admitted liability; and

(b) the action shall go to trial only as to the assessment of the amount to be recovered by the plaintiff.

(3) An order for judgment—

(a) may be set aside, on terms, by order of the Court at any time before judgment; and

(b) shall, without order, be set aside on the filing of a notice of grounds of defence under section 56 (1) in the action in which the order for judgment was made.

(4) Subsection (2) shall, on the setting aside of an order for judgment in accordance with subsection (3), cease to have any operation upon or in respect of the action in which the order for judgment was made.

(5) Where an order for judgment is set aside, the Court may, at the same time or subsequently, make such orders as it thinks fit as to the continuance of the action and as to the costs incurred by any party by the making or setting aside of the order for judgment or by any adjournment of the hearing of the action.

58. (1) Where, in an action commenced by the lodging of a statement of liquidated claim— Default judgment.

(a) a defendant has not filed a notice of the grounds of his defence under section 56 (2); and

(b) judgment has not been entered up in the action,

the

the plaintiff may, within twelve months after the expiration of the prescribed time, or at such later time as the Court may, on sufficient cause being shown, allow, and on filing—

(c) an affidavit of service of the statement of claim on that defendant; and

(d) a statement of—

(i) the amount then due to the plaintiff in respect of the cause of action for which the action was commenced; and

(ii) any payments made or credits accrued since the commencement of the action in reduction of the amount of the plaintiff's claim or costs,

verified by the oath of the plaintiff, or his solicitor or agent,

have default judgment entered up by the Court or the registrar against that defendant for the amount referred to in paragraph (d) (i) or the amount specified in the statement of claim (whichever is the lesser), and such amount (if any) as may, for the purposes of this subsection, be prescribed as costs.

(2) A default judgment under this section may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

Subdivision 5.—Judgment by confession or agreement.

Interpretation: Pt. III, Div. 3, Subdiv. 5.

59. In this Subdivision—

"defendant", in relation to an action—

(a) in which there is only one defendant—means the defendant; or

(b) in which there are two or more defendants —means all or any of the defendants;

"plaintiff",

"plaintiff", in relation to an action—

(a) in which there is only one plaintiff—means the plaintiff; or

(b) in which there are two or more plaintiffs—means all the plaintiffs.

Judgment by confession.

60. (1) At any time before judgment in an action, the defendant may sign a statement confessing to the amount, or part of the amount, of the claim of the plaintiff and may specify in that statement by what instalments payable at what times the defendant is prepared to pay the amount so confessed to.

(2) Where a statement under subsection (1) is filed before judgment, the registrar shall as soon as practicable thereafter give or send by post to the plaintiff or his solicitor notice of the amount to which the defendant has confessed and of any terms of payment specified by the defendant in that statement.

(3) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has not in the action claimed damages in respect of any personal injuries, the registrar shall forthwith after giving or sending the notice under subsection (2)—

(a) enter up judgment for the plaintiff for that amount; and

(b) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(4) Where the confession is to the whole of the amount of the claim of the plaintiff and the plaintiff has in the action claimed damages in respect of any personal injuries and the plaintiff within the prescribed time—

(a) does not—

(i) make application for leave to amend his claim by increasing the amount of damages claimed; or

(ii) make application to the Supreme Court for an order under section 145 removing the action into the Supreme Court and give notice to the registrar that he has so applied; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(5) Where the confession is to part only of the amount of the claim of the plaintiff and the plaintiff within the prescribed time—

(a) does not file a notice refusing to accept in full satisfaction of his claim the amount so confessed to; and

(b) does not file a notice refusing to accept any terms of payment specified by the defendant in the statement made by him under subsection (1),

the

the registrar shall forthwith after the expiration of that prescribed time—

(c) enter up judgment for the plaintiff for the amount to which the defendant has confessed; and

(d) where any terms of payment are specified in the statement, order that the judgment debt be paid by such instalments payable at such times as are so specified.

(6) An order made under subsection (3) (b), (4) (d) or (5) (d) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

(7) Where within the prescribed time the plaintiff does not—

(a) if the confession is to part only of the amount of the claim of the plaintiff—file a notice refusing to accept in full satisfaction of his claim the amount confessed to; or

(b) if the confession is to the whole of that amount and the plaintiff has in the action claimed damages in respect of any personal injuries—make an application as referred to in subsection (4) (a) (i), or make an application and give notice, as referred to in subsection (4) (a) (ii),

but files a notice refusing to accept any of the terms of payment specified by the defendant in the statement made by him under subsection (1), the registrar shall forthwith enter up judgment for the plaintiff for the amount to which the defendant has confessed and—

(c) the registrar shall be deemed to have made an order under section 88 (4) that the judgment debt be paid by such instalments payable at such times as may be specified in the statement; and

(d) the plaintiff's notice of refusal shall be deemed to be a notice of objection under section 88 (5).

(8)

(8) Where the plaintiff makes application, on the ground that he did not receive in sufficient time any notice required to be forwarded to him by the registrar under subsection (2), for the setting aside of any judgment entered up by the registrar under subsection (4) (c) or (5) (c) or any order made by the registrar under subsection (3) (b), (4) (d) or (5) (d), the Court may, if it thinks fit, set aside, on terms, the judgment or order.

(9) Where, within the prescribed time referred to in subsection (4), the plaintiff makes an application as referred to in subsection (4) (a) (i) or makes an application and gives notice, as referred to in subsection (4) (a) (ii), and the application is refused—

(a) the provisions of subsections (4) and (7) shall apply as if the application had not been made; and

(b) where the time at which the registrar is, in accordance with the rules, notified of the refusal is later than that prescribed time, the provisions of subsection (4) shall so apply as if the reference therein to the expiration of the prescribed time were a reference to the time at which the registrar is so notified.

Judgment by agreement.

61. (1) At any time before judgment in an action—

(a) where there are parties joined otherwise than as plaintiff or defendant—

(i) all the parties; or

(ii) the plaintiff and the defendant; or

(b) where there are no parties joined otherwise than as plaintiff or defendant—the plaintiff and the defendant,

may enter into an agreement as to the judgment to be entered in the action as between the parties to the agreement and as to the terms and conditions (if any) upon which the judgment is to be satisfied.

(2)

(2) Where an agreement under subsection (1) is filed before judgment, the registrar shall forthwith enter up judgment in accordance with that agreement.

(3) Where—

(a) the registrar enters up a judgment under subsection (2);

(b) a judgment debt arises by virtue of the judgment; and

(c) the agreement specifies by what instalments payable at what times the judgment debt or part thereof is to be paid,

the registrar shall forthwith order that the judgment debt or part be paid by such instalments payable at such times as are so specified.

(4) An order made under subsection (3) shall be deemed to be an order made under section 88 (4) pursuant to an agreement referred to in section 88 (1) (b).

(5) A judgment entered up under subsection (2) pursuant to an agreement under subsection (1) may be set aside, on terms, by the Court on sufficient cause being shown on the application of any party to the action who was not a party to that agreement.

Machinery as to statements of confession and agreements.

62. (1) A statement under section 60 (1) may, instead of being signed by the defendant, be signed by his solicitor or barrister on his behalf.

(2) An agreement under section 61 (1) may, instead of being entered into personally by a party to the action, be entered into by his solicitor or barrister on his behalf.

(3) A statement under section 60 (1) or an agreement under section 61 (1) shall have no force or effect for the purposes of this Subdivision unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) A judgment entered up—

(a) under section 60 pursuant to a statement under section 60 (1) shall, as between the plaintiff and the defendant signing the statement; or

(b) under section 61 pursuant to an agreement under section 61 (1) shall, as between the parties to the agreement,

be in full discharge of all demands in respect of the cause of action in respect of which the statement was signed or the agreement was entered into.

Subdivision 6.—Arbitration.

Arbitration.

63. (1) The Court at any time may, with the consent of all the parties to an action, order, on terms, that the action be referred to an arbitrator.

(2) An award made by an arbitrator in an action referred to arbitration under subsection (1) shall, as soon as practicable, be—

(a) communicated by the arbitrator to the registrar; and

(b) entered by the registrar as the judgment of the Court in the action.

(3) A judgment entered under subsection (2) (b) shall, subject to subsection (4), be as binding and effectual for all purposes as if given by the Court.

(4)

(4) The Court, on application made to it by any party within the prescribed time, may set aside an award referred to in subsection (2) and any judgment entered under subsection (2) (b) in consequence of the award, and may—

(a) refer the award back to the arbitrator who made it; or

(b) revoke the reference to the arbitrator who made the award and make such order as it thinks fit for the continuance of the action.

Subdivision 7.—Witnesses, evidence and ancillary matters.

64. (1) On request by a party to an action, the registrar for any proclaimed place (whether or not that place is the proper place in relation to the action) shall, subject to the rules, issue— **Subpoenas.**

(a) a subpoena to give evidence, requiring a person specified therein to attend and give evidence at any hearing of the action or of proceedings ancillary to the action, as directed by the subpoena; or

(b) a subpoena for production, requiring a person specified therein to attend and produce, for the purpose of evidence, at any hearing of the action or of proceedings ancillary to the action any document or thing that is in his possession or control and specified in the subpoena, as directed by the subpoena.

(2) The rules may make provision for or with respect to authorising compliance with a subpoena for production issued in respect of a document or thing by the production of the document or thing to a registrar.

(3)

(3) A person—

(a) who is duly served with a subpoena issued under subsection (1);

(b) to whom at the time of service of the subpoena, or not later than a reasonable time before the day on which his attendance is required by the subpoena, tender is made of an amount in respect of the expenses of complying with the requirements of the subpoena, determined in accordance with the rules; and

(c) who, without reasonable excuse, fails to comply with the subpoena,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or produce the document or thing.

Evidence and production by persons present.

65. A person who is present at the hearing of an action or of proceedings ancillary to an action and who, having been required by the Court but not by a subpoena to do so, refuses without reasonable excuse—

(a) to give evidence; or

(b) to produce a document or thing then in his possession,

shall be liable to a fine of such amount not exceeding $500 as the Court orders, but shall not be released by the imposition or payment of any such fine from any obligation to give the evidence or to produce the document or thing.

Fines under section 64 or 65.

66. (1) A fine imposed under section 64 or 65 is payable to the registrar.

(2) Payment of a fine imposed under section 64 or 65 may, if the Court so orders, be enforced, subject to the rules, as if the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the registrar were a judgment creditor.

(3) The amount of any fine paid to or recovered by the registrar under this section shall be applied in such proportions as the Court thinks fit—

(a) towards compensating any party to the action who is injured by failure to comply with the requirements of the subpoena or the Court in respect of which the fine was imposed; and

(b) to the Consolidated Revenue Fund.

Bringing up a prisoner to give evidence.

67. (1) A Judge (whether or not sitting at a proclaimed place), on application made in the prescribed manner by a party to an action, may if he thinks fit issue an order under the seal of the Court for bringing up before the Court any person confined in any prison or place under any sentence, under commitment for trial, or for any other reason, to be examined as a witness in the action, and for returning him to confinement.

(2) The person having the custody of a person in respect of whom an order is made under subsection (1) shall not be bound to comply with the order unless tender is made to him of an amount sufficient to cover the reasonable expenses involved in complying with the order.

Matters ancillary to trial.

68. (1) The rules may make provision for or with respect to—

(a) empowering a party to an action to give another party a notice requiring that other party to do all or any of the following things:—

(i) to give discovery of documents;

(ii)

(ii) to produce documents for inspection;

(iii) to produce documents at the hearing of the action;

(iv) to attend for a medical examination; or

(v) to make admissions for the purposes of the action;

(b) the manner of compliance with such a requirement; and

(c) empowering the Court to make such orders as may be prescribed in the event of failure to comply with such a requirement.

(2) The Court may, subject to and in accordance with the rules, order, on terms, that—

(a) a natural person, or a corporation through any of its officers, attend for examination before the Court, or attend and produce documents, for the purpose of ascertaining or assisting in the ascertainment of the identity of, and the name and place of residence of, and other particulars relating to, a person against whom an action may be brought;

(b) a party give discovery of documents to any party;

(c) a party produce documents for inspection by any party;

(d) a party produce documents at the hearing of any action;

(e) a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any action;

(f) the evidence of a witness be allowed to be taken on an examination before the hearing of an action;

(g) a party attend for a medical examination; or

(h) a party give further particulars of any statement of claim lodged, grounds of defence filed, or cross-claim pleaded by him,

and may make such further order as may be prescribed in the event of any failure by a person to comply with its order.

Informal proof; admissions. No. 52, 1970, s. 82.

69. (1) The Court may at any stage of any action—

(a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, and with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and

(b) require any party to the action, not being a minor or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in case of refusal or neglect to make the admissions may, unless the Court is of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

(2) An admission made as required by the Court under subsection (1) (b)—

(a) shall be for the purpose of the action in which it is made and for no other purpose;

(b) shall be subject to all just exceptions; and

(c) may, with the leave of the Court, given on terms, be amended or withdrawn.

70.

Examination on oath. No. 52, 1970, s. 83.

70. Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person for the purposes of an action—

(a) the examination shall be taken on oath; and

(b) the oath shall be administered by the person taking the examination or by a Judge.

Subdivision 8.—*Trial and jury.*

Setting down for trial.

71. Subject to this Act and the rules, an action in which a notice of grounds of defence is filed under section 56 or in which an order for judgment is made under section 57, shall be set down for trial in accordance with the rules.

Action called on for trial.

72. (1) Subject to this Act, where an action that has been set down for trial is called on for trial—

(a) if the plaintiff and a defendant appear, the Court may proceed to hear and dispose of the action as against that defendant; or

(b) if the plaintiff does, but a defendant does not, appear, the Court may proceed to the trial of the action against that defendant on the part of the plaintiff only.

(2) Where the Court proceeds to the trial of the action on the part of the plaintiff only, as referred to in subsection (1) (b), its judgment—

(a) may, on sufficient cause being shown, be set aside by order of the Court on terms; and

(b) shall, if not set aside, be as final and conclusive between the parties to the action as if both parties had appeared.

Striking out of action.

73. (1) The Court may, if it thinks fit, strike out an action at any time on terms, and without affecting the generality of the foregoing provisions of this subsection, the Court may so strike out an action if—

(a) no party appears; or

(b) a defendant does, but the plaintiff does not, appear.

(2) Where an action is struck out under subsection (1), the Court may, on the application of any party, order that the action be restored on terms, and without affecting the generality of the foregoing provisions of this subsection, that action may be so restored upon such terms and conditions as to costs, the staying of the action until payment of costs, and the priority of the hearing of the action as the Court thinks fit.

Conduct of the trial.

74. Subject to any direction given by the Court under section 156 (2), the order of evidence and addresses and conduct of the trial in respect of any action shall be in accordance with the rules.

Nonsuit.

75. The Court, at the trial of an action, may, in the prescribed circumstances, order a nonsuit where satisfactory proof is not given entitling the plaintiff to the judgment of the Court.

76.

Verdict exceeding $10,000.

76. Where in an action a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at—

(a) an amount in excess of $10,000 but not in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the full amount of the verdict; or

(ii) the total amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be; or

(b) an amount in excess of $15,000, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

(i) the amount of $15,000; or

(ii) the amount of $15,000 reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

Questions of fact and law.

77. (1) In an action the Judge shall determine all questions of law.

(2) In an action the Judge shall, subject to subsection (5), determine all questions of fact unless a jury has been summoned.

(3)

(3) Subject to sections 78 and 79, an action shall be tried without a jury unless the Court makes an order (which may be made on terms) to the contrary.

(4) The Court may order that any question of fact in an action be tried before any other question of fact in the action.

(5) In an action, where a jury has been summoned—

(a) the Court may order that all or any issues of fact be tried without the jury if—

(i) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury; or

(ii) all parties consent to the order; and

(b) issues of fact on a defence arising under section 63 (5) or 64 (1) (c) of the Workers' Compensation Act, 1926, shall be tried without the jury.

Where jury may be summoned.

78. (1) In any action (other than an action to which section 79 applies), where the amount claimed exceeds $100, any party may, within the prescribed time, by filing a requisition for trial with a jury and paying the fee prescribed by the regulations made under section 150 require that a jury be summoned to try the action, and a jury shall be so summoned.

(2) Where the Court makes an order under section 77 (3) or 79 (1), the plaintiff shall pay the fee prescribed by the regulations made under section 150 and shall not be entitled to take any further step in the action until the fee is paid.

(3) The fee paid under subsection (1) or (2) shall be treated as costs in the action, unless the Court otherwise orders.

79.

Running down cases. No. 52, 1970, s. 87.

79. (1) In any action to which this section applies, the Court may, on the application of any party, and shall, on the application of all parties, make an order (which may be made on terms) that the action be tried with a jury.

(2) Subject to subsection (4), this section applies to any action in which—

(a) damages are claimed in respect of—

(i) the death of or bodily injury to any person and the claim is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street;

(ii) damage to property caused by or arising out of the use of a motor vehicle; or

(iii) any other matter in which the liability incurred is caused by or arises out of the use of a motor vehicle; or

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a).

(3) In subsection (2)—

"motor vehicle" means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

"public street" means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

(4)

(4) This section does not apply to an action for damages in respect of the death of or bodily injury to any person where the action is based upon an act, neglect or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff.

Special verdict. No. 52, 1970, s. 90.

80. It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial of an action.

Subdivision 9.—Judgments and orders.

Judgment final.

81. Subject to this or any other Act, a judgment in an action shall, unless set aside in accordance with this Act, be final and conclusive between the parties to the action.

Setting aside of judgment or order.

82. (1) A judgment or order of the Court in an action may, on sufficient cause being shown, be set aside, on terms, by order of the Court, if the judgment was given or entered up, or the order was made, irregularly, illegally or against good faith.

(2) Subsection (1) does not apply to an irregularity arising by virtue of a failure to which section 159 applies.

(3) A judgment or order of the Court in an action may, on terms, be set aside by order of the Court if the parties to the action consent.

83.

Judgment in detinue.

83. (1) The judgment in an action for the detention of goods, if for the plaintiff, shall be for an amount comprising—

(a) the value of the goods, as determined by the Court; and

(b) damages (if any) awarded for the detention of the goods.

(2) The rules may make provision for or with respect to the circumstances in which the judgment debt in an action for the detention of goods shall be deemed to be satisfied, to the extent of the value of the goods, by the delivery of the goods to the plaintiff.

DIVISION 4.—*Actions: Enforcement of Judgments.*

Subdivision 1.—*General.*

Interpretation: Pt. III, Div. 4.

84. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires—

"judgment" includes any order of the Court for the payment of an amount of money as costs or otherwise;

"judgment debt" includes—

(a) any amount ordered by the Court to be paid as costs or otherwise; and

(b) any amount payable under section 120 as costs without any order of the Court.

(2) A reference in this Division to the giving of a judgment includes a reference to the making by the Court of an order for the payment of an amount of money as costs or otherwise.

Interest on judgment debt.

85. (1) Unless the Court orders in any particular case that interest be not payable, interest shall, subject to subsection (3), be payable on so much of the amount of a judgment debt as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of a judgment debt shall—

(a) subject to subsection (3), be calculated as from the date when the judgment debt came into being or from such later date as the Court in any particular case fixes;

(b) be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act, 1970; and

(c) form part of the judgment debt, but not so as to require the payment of interest upon interest.

(3) Notwithstanding subsection (1) or (2), where—

(a) the amount of a judgment debt (excluding the amount of costs to be ascertained by taxation or otherwise) is paid in full within twenty-one days after the judgment debt becomes payable; or

(b) the amount of costs ascertained by taxation or otherwise is paid in full within twenty-one days after that amount is so ascertained,

interest shall, unless the Court otherwise orders in any particular case, not be payable on the amount so paid.

Setting off of judgments.

86. (1) Where the judgment debtor in respect of an action (in this section referred to as "the first action") recovers judgment in his favour in another action (in this section referred to as "the second action") against his

judgment

judgment creditor, the judgment debtor may apply to the Court sitting at the proper place for either of those actions for an order that the judgment against him be set off against the judgment in his favour.

(2) Where an order is made under subsection (1) and—

(a) the amount of the judgment debt in the first action is less than or equal to the amount of the judgment debt in the second action, the judgment in the first action shall be deemed to be satisfied, and the amount of the judgment debt in the second action shall be reduced by the amount of the judgment debt in the first action; or

(b) the amount of the judgment debt in the first action is more than the amount of the judgment debt in the second action, the amount of the judgment debt in the first action shall be reduced by the amount of the judgment debt in the second action, and the judgment in the second action shall be deemed to be satisfied.

Subdivision 2.—Payment of judgment debt.

Payment of judgment debt generally.

87. (1) The Court may, on the application of any party to an action or without any such application being made, when giving judgment in the action, order that the judgment debt (if any) be paid at such time, or by such instalments payable at such times, as it thinks fit.

(2) Subject to this Subdivision, every judgment debt shall be payable forthwith.

(3) Subject to subsection (4), the amount of every judgment debt arising from an action, whether payable in one sum or by instalments, shall be payable to the registrar.

(4)

(4) Notwithstanding subsection (3), any payment by or on behalf of a judgment debtor made on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, operate to reduce the judgment debt by the amount of the payment.

(5) Where the Court makes an order under subsection (1), the order shall, while it remains in force, operate as a stay of enforcement of the judgment.

(6) Where a judgment creditor files an affidavit for the purpose of requiring the issue of any document for or in connection with the enforcement of a judgment, the affidavit shall, in any action (whether in the Court or in any other court) by the judgment debtor against the registrar for the wrongful issue of the document, be conclusive evidence in favour of the registrar that at the time of the issue of the document—

(a) where an amount is stated in the affidavit as having been paid in reduction of the judgment debt—that amount and no other amount had been paid; or

(b) where there is a statement in the affidavit that no amount has been paid in reduction of the judgment debt—no amount had been paid,

by or on behalf of the judgment debtor in reduction of the judgment debt.

Order for instalments subsequently.

88. (1) Whether or not an order in respect of a judgment debt has been made under section 87 (1)—

(a) the judgment debtor may make an application in writing, supported by an affidavit as to his property and means, to the registrar for leave to pay the judgment debt, or the balance of the judgment debt

then

then owing to the judgment creditor, by such instalments payable at such times as may be specified in the application; or

(b) the judgment creditor and the judgment debtor may enter into an agreement specifying the amount agreed to be then owing to the judgment creditor, and may in that agreement specify by what instalments payable at what times that amount is to be paid.

(2) An agreement under subsection (1) (b) may, instead of being entered into personally by the judgment creditor or the judgment debtor, be entered into by his solicitor or barrister on his behalf.

(3) An agreement under subsection (1) (b) shall have no force or effect for the purposes of this section unless the signature of every person executing it, other than a solicitor or barrister, is witnessed by a person of a prescribed class.

(4) Where—

(a) an application is made by a judgment debtor under subsection (1) (a), the registrar shall forthwith consider and determine the application and may—

(i) order that the judgment debt be paid by such instalments payable at such times as are specified in the application; or

(ii) refuse to make such an order; or

(b) an agreement under subsection (1) (b) is filed, the registrar shall forthwith order that the judgment debt be paid by such instalments payable at such times as are specified in the agreement,

and where he makes an order under paragraph (a) or (b) the registrar shall, as soon as practicable thereafter, give or send by post to the judgment creditor and judgment debtor notice of the order.

(5) Where an order is made by a registrar under subsection (4) pursuant to an application made by the judgment debtor under subsection (1) (a), the judgment creditor may, within the prescribed period after notice of the order was given or sent to him under subsection (4) by the registrar, file notice of his objection to the payment of the judgment debt by the instalments specified in the order.

(6) Where under subsection (4) the registrar refuses to make an order, or where the judgment creditor files with the registrar a notice of objection in accordance with subsection (5), the registrar shall set down the judgment debtor's application for hearing by the Court and shall as soon as practicable thereafter give or send by post to the judgment creditor and the judgment debtor notice of the time and place set down by him for the hearing of the judgment debtor's application, and the Court may, after hearing the judgment debtor and the judgment creditor, or such of them as appears, deal with the application and—

(a) where the registrar refused to make the order—

(i) make an order that the judgment debt, or the balance of the judgment debt then owing to the judgment creditor, be paid by such instalments payable at such times as the Court thinks fit; or

(ii) refuse to make such an order; or

(b) where the judgment creditor has filed such a notice of objection, confirm, vary or rescind the order of the registrar.

(7) Where—

(a) an application is made by a judgment debtor under subsection (1) and no application in respect of the judgment debt has previously been made under that subsection or under section 87 (1); and

(b)

(b) the registrar refuses under subsection (4) to make an order pursuant to the application,

the application shall, until it is dealt with under subsection (6), and unless the Court otherwise orders, operate as a stay of enforcement of the judgment in respect of which the application is made, except enforcement by way of a garnishee order to which section 98 applies made before the application was made to the registrar.

(8) Where the Court or the registrar makes an order under this section, the order shall, while it remains in force, operate as a stay of enforcement of the judgment in respect of which the order was made, except enforcement by way of a garnishee order to which section 98 applies made before the order under this section was made.

(9) An order may be made under this section in respect of a judgment debt, notwithstanding that at the time when the application for the order or the order is made there is in force an order under section 87 (1) or under this section, but where there is in force such an order any subsequent order made under this section in respect of the same judgment debt supersedes the former order.

Miscellaneous provisions as to orders under sections 87 and 88 and applications.

89. (1) Upon an application, supported by affidavit, made by the judgment creditor on the grounds that there has been a substantial increase in the property or means of the judgment debtor, the Court may, if satisfied as to the truth of those grounds, vary or rescind any order under section 87 or 88 in respect of the judgment debt and, where the Court refuses to grant the application, may order the judgment creditor to pay to the judgment debtor such amount as it thinks fit for the expenses of the judgment debtor in attending the Court to oppose the application.

(2) An order made under section 87 or 88 in respect of a judgment debt shall, subject to the agreement (if any) consequent on the filing of which the order was made under section 88 (4) (b), cease to be in force if the judgment debtor fails to make any payment in accordance with the order, and thereafter the judgment may, except where otherwise directed by the Court or provided in the agreement (if any), be enforced for the balance of the judgment debt owing to the judgment creditor.

Subdivision 3.—*Examination of judgment debtor.*

90. In this Subdivision— Interpretation: Pt. III, Div. 4, Subdiv. 3.

"examination summons" means summons issued under section 91 (1);

"issuing registrar", in relation to an examination summons, means the registrar for the proclaimed place at which the summons was issued;

"presiding registrar" means a registrar before whom a person is required to attend for examination under this Subdivision.

91. (1) Where a judgment debt arising from an action has not been satisfied, the judgment creditor may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons directed— Examination summons.

(a) where the judgment debtor is not a corporation—to the judgment debtor; or

(b) where the judgment debtor is a corporation—to an officer or former officer of the corporation.

(2)

(2) The examination summons—

(a) shall summon the person to whom it is directed to attend before the registrar for a proclaimed place that, in the opinion of the issuing registrar, is either—

(i) the nearest proclaimed place to the place where that person is resident, as stated by the judgment creditor to the issuing registrar in writing; or

(ii) the most easily accessible to that person,

and that is specified in the summons;

(b) shall summon that person so to attend on a day and at a time fixed by the issuing registrar and specified in the summons, and thereafter as required by the presiding registrar, to be orally examined by the judgment creditor before the presiding registrar; and

(c) may require that person to produce to the presiding registrar, at the examination referred to in paragraph (b), any document or thing in that person's possession or control which tends to show the judgment debtor's true financial circumstances.

(3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons, the judgment creditor may orally examine that person before the presiding registrar as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

(4) The examination summons shall not be directed to an officer or former officer of a corporation under subsection (1) (b) unless the Court or the issuing registrar is

satisfied

satisfied by affidavit or otherwise that the officer or former officer is likely—

(a) to have sufficient knowledge of the affairs of the corporation to enable him to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination under this Subdivision; or

(b) to have in his possession or control any document or thing which tends to show the true financial circumstances of the corporation.

(5) Where in respect of the judgment debt the person to whom the examination summons is directed has attended before a registrar for examination under this Subdivision in answer to or consequent upon the issue of an examination summons, another examination summons directed to that person shall not, unless the Court, on the application of the judgment creditor, otherwise orders, be issued in respect of the judgment debt within three months after that person's attendance.

(6) A registrar may be a presiding registrar as well as the issuing registrar in relation to the one examination summons.

Failure to attend in answer to examination summons.

92. (1) If at the time set down (whether originally or in an order under subsection (7) (b) (ii) or on an adjournment) for the examination of the person to whom an examination summons is directed he fails to attend before the presiding registrar, that registrar, unless he has information satisfying him that the judgment debt has been paid, shall, if the judgment creditor so requests and—

(a) upon due proof of service of the examination summons on the person to whom the summons is directed or, where the examination has been adjourned, that that person has been notified of the time and place fixed for the examination; and

(b)

(b) upon due proof of the tender to that person of the reasonable expenses of attending in answer to the summons, at the time of service of the summons or not later than a reasonable time before the day on which he was required by the summons to attend before the registrar,

report in writing to the Court that that person has so failed to attend.

(2) After the report is made to it, the Court may, if it thinks fit—

(a) authorise the presiding registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or

(b) adjourn the examination of that person and order that he attend before the presiding registrar on a date and at a time specified in the order,

and the presiding registrar shall forthwith give that person, or send to him by post at his address last known to the presiding registrar, a notice informing him of any action taken by the Court under this subsection.

(3) A warrant shall not be issued under this section until after the expiration of fourteen days after the Court authorised its issue.

(4) If during the period of fourteen days after the Court authorised the issue of a warrant in respect of a person he has not attended, by arrangement with the presiding registrar, to be examined as to the matters referred to in section 91 (3), the presiding registrar, on the application of the judgment creditor verified by his affidavit or in such other manner as may be prescribed, may, after the expiration of that period, issue his warrant for the apprehension of that person.

(5)

(5) The warrant shall—

(a) be under the hand of the presiding registrar;

(b) name or otherwise describe the person whose apprehension is required by the warrant;

(c) state shortly the reason for its issue;

(d) order the bailiff, required under section 27 (2) to execute it, to apprehend that person if he is within New South Wales and cause him to be brought before the registrar for the proclaimed place nearest to the place at which he is apprehended to be examined as to the matters referred to in section 91 (3); and

(e) continue in force until it—

(i) is executed;

(ii) is revoked by order of the Court sitting at any proclaimed place or of the registrar for the proclaimed place at which it was issued, communicated to the bailiff in whose hands the warrant is for execution; or

(iii) expires in accordance with the rules,

whichever first occurs.

(6) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of the warrant.

(7) Where the person in respect of whom the issue of a warrant is authorised under subsection (2) (a) attends before a registrar by arrangement, as referred to in subsection (4), or is brought before a registrar under the warrant, as referred to in subsection (5) (d), and—

(a) the judgment creditor attends before the registrar—the judgment creditor may orally examine that person before the registrar as to the matters referred to in section 91 (3); or

(b)

(b) the judgment creditor does not so attend—the registrar may—

(i) in accordance with the rules examine that person as to the matters referred to in section 91 (3) and report to the judgment creditor the results of the examination;

(ii) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a day and at a time specified in the order; or

(iii) strike out the examination.

(8) For the purposes of subsection (5) (e) (i), the warrant is executed when the person whose apprehension is required has been examined as to the matters referred to in section 91 (3), or the examination is adjourned to another day, or an order is made under subsection (7) (b) (ii) in respect of the examination, or the examination is struck out, whichever first occurs.

Instalment order after examination.

93. (1) Where a person has attended for examination in accordance with this Subdivision before or by the issuing registrar in relation to a judgment debt, that registrar may make an order for the payment of the judgment debt or the balance of the judgment debt then owing to the judgment creditor by such instalments payable at such times as may be specified in the order.

(2) An order made under subsection (1) shall be deemed to be an order made under section 88 (4) pursuant to an application made by the judgment debtor under section 88 (1) (a).

94.

Failure to give evidence, etc., at examination.

94. Where a person attends before or is brought before a registrar for examination in accordance with this Subdivision and that person—

(a) without reasonable excuse, refuses to give evidence on oath at the examination;

(b) gives false information at the examination; or

(c) without reasonable excuse, fails to produce any document or thing that he is required by an examination summons to produce thereat,

the Court may, if that registrar reports the refusal, giving of false information or failure to the Court and if the Court thinks fit, deal with the refusal, giving of false information or failure as if it were a contempt committed in the face of the Court.

Adjournment of examination.

95. A registrar may from time to time adjourn any examination being or to be conducted before or by him under this Subdivision.

Court may exercise registrar's powers under this Subdivision.

96. The Court may exercise or perform any of a registrar's powers, authorities, duties or functions under this Subdivision.

Subdivision 4.—Attachment of debts.

Garnishee orders.

97. (1) Where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, make, in respect of the judgment debt, a garnishee order directed to a specified person (who is in this Subdivision referred to as a "garnishee").

(2)

(2) A garnishee order shall take effect upon its being served on the garnishee, and upon its being so served—

(a) except in a case to which paragraph (b) or (c) applies, shall operate to attach in the hands of the garnishee all debts which were due, owing or accruing from him to the judgment debtor at the time when the garnishee order was made and which are so due, owing or accruing at the time of service of the garnishee order;

(b) in the case of an order expressed to be for the attachment of any wage or salary, not being an order to which paragraph (c) applies, shall operate to attach the wage or salary next payable by the garnishee to the judgment debtor within one month after the service of the order on the garnishee; and

(c) in the case of an order expressed to be for the continuous attachment of the wage or salary of a judgment debtor, shall operate to attach any wage or salary as provided in section 98 (4).

(3) A garnishee order shall specify the amount of the judgment debt owing to the judgment creditor and shall require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached by operation of the order or so much thereof as may be sufficient to satisfy the judgment debt specified in the order or the balance of the judgment debt specified in the order after deducting therefrom such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of the judgment debt otherwise than pursuant to the order.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the registrar is of the opinion that a garnishee order should not be made, he may refuse to make the order.

Continuous operation of certain garnishee orders.

98. (1) In this section, "instalment order" means an order made under section 88.

(2) This section applies to and in respect of a garnishee order expressed to be for the continuous attachment of the wage or salary of a judgment debtor.

(3) A garnishee order to which this section applies, upon its being served on the garnishee, shall, subject to this section, thereafter operate to attach any wage or salary payable by the garnishee to the judgment debtor from time to time until the expiration of a period of four weeks after the garnishee order is so served.

(4) Where an instalment order is in force relating to a judgment debt the subject of a garnishee order to which this section applies and a copy of the instalment order is served on the garnishee, the garnishee order shall thereafter, unless any period specified in the instalment order for which it was to remain in force has expired, operate, to the extent necessary to secure payment of the instalments specified in that instalment order, to attach any wage or salary payable by the garnishee to the judgment debtor from time to time.

(5) A garnishee order made for the attachment of a wage or salary to answer the same judgment debt in respect of which a garnishee order to which this section applies is in force shall have no force or effect.

Limitation on operation of garnishee orders attaching a wage or salary.

99. (1) In this section—

"prescribed rate", in relation to a wage or salary, means—

(a) where no part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage; or

(b)

(b) where any part of the wage or salary is otherwise attached under this or any other Act—a rate equal to $8 per week less than the Sydney basic wage increased by the amount so attached, calculated on a weekly basis;

"Sydney basic wage" means the basic wage for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, and appropriate for the judgment debtor;

"wage or salary" includes earnings that are not payable under a contract of employment, but that are either analogous to or in the nature of wages or salary, and the earnings of a share farmer or share worker.

(2) A garnishee order for the attachment of the wage or salary of a judgment debtor shall extend only—

(a) where the wage or salary is payable for a period of one week, to that part of the wage or salary that is payable at a rate in excess of the prescribed rate; or

(b) where the wage or salary is payable for a period greater than one week, to that part of the wage or salary payable for that period that is payable at a rate in excess of the prescribed rate.

Payment under certain garnishee orders.

100. (1) Subject to compliance with subsection (2), a garnishee required to make a payment under a garnishee order to which section 98 applies may deduct therefrom for his own use an amount equal to ten per centum thereof.

(2) Where a garnishee makes a deduction in accordance with subsection (1), he shall forward to the judgment creditor, when making payment to the registrar or to

or at the direction of the judgment creditor of the balance of the payment due, a statement showing—

(a) the amount deducted under the garnishee order from the wage or salary of the judgment debtor;

(b) the amount deducted by the garnishee for his own use under subsection (1); and

(c) the amount of the payment to the registrar or to or at the direction of the judgment creditor, as the case may be.

(3) Where a garnishee makes a payment in accordance with a garnishee order to which section 98 applies after making a deduction in accordance with subsection (1), the amount deducted shall for the purposes of section 105 (2) be deemed to have been paid by the garnishee.

Limitation of payment under certain concurrent garnishee orders.

101. (1) In this section, "instalment garnishee order" means a garnishee order that operates as provided in section 98 (4), and includes an attachment order, made or given under an Act other than this Act, that has a like operation.

(2) This section shall apply where a wage or salary is attached by more than one order, including at least one garnishee order made under this Act, whether or not the other orders were made under this Act, and where, of the orders attaching the wage or salary, at least one is, and one is not, an instalment garnishee order.

(3) Subject to section 99 and except to the extent that, in the case of an order made under an Act other than this Act, that other Act otherwise provides, where this section applies the amount payable by the garnishee under any of

the

the orders that is not an instalment garnishee order shall not, in respect of any payment of wage or salary attached under such an order, exceed—

(a) where only one of the orders is an instalment garnishee order, the amount payable by the garnishee under that instalment garnishee order in respect of that payment of wage or salary; or

(b) where more than one of the orders is an instalment garnishee order, the greater, or greatest, of the amounts payable by the garnishee under the instalment garnishee orders in respect of that payment of wage or salary.

Procedure where garnishee order not complied with.

102. (1) Where a judgment creditor is satisfied that a garnishee order relating to the judgment debt has not been complied with by the garnishee on whom it was served, he may apply in the prescribed manner to the registrar for the issue of, and the registrar may issue, a summons (in this Subdivision referred to as "the garnishee summons") requiring the garnishee to show cause before the Court why the garnishee should not comply with the garnishee order.

(2) The garnishee summons—

(a) shall summon the garnishee to attend the Court sitting at a proclaimed place that, in the opinion of the registrar issuing the garnishee summons, is either—

(i) the nearest proclaimed place to the place where the garnishee is resident, as stated by the judgment creditor to that registrar in writing; or

(ii) the most easily accessible to the garnishee,

and that is specified in the garnishee summons; and

(b)

(b) shall summon the garnishee so to attend on a day and at a time fixed by that registrar and specified in the garnishee summons.

(3) At the time set down (whether originally or on an adjournment) for the garnishee to attend to answer the garnishee summons the Court may hear and determine any question of the amount of the debt, wage or salary (if any) attached by the garnishee order, and may give judgment for that amount, or for the unpaid balance of the judgment debt, whichever is the lesser, in favour of the judgment creditor against the garnishee, but shall not give judgment in the absence of the garnishee except upon due proof of service of the summons on the garnishee or, where the matter has been adjourned, of the garnishee having been notified of the time and place fixed for him to attend.

(4) Where, by reason of the smallness of the judgment debt or of the amount to be recovered or of the debt, wage or salary sought to be attached or for any other reason, the Court is of the opinion that judgment should not be given under subsection (3), it may refuse to give the judgment.

Bank accounts. S.C.R. Pt. 46, rr. 2, 5 (2).

103. (1) An amount standing to the credit of a judgment debtor in an account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied.

(2) An amount standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Subdivision, be a debt due, owing or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied :—

(a) a condition that notice is required before money is withdrawn;

(b) a condition that a personal application must be made before money is withdrawn;

(c) a condition that a deposit book must be produced before money is withdrawn; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

(3) Where after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor as referred to in subsection (1) or (2), the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Lien or claim of third person on debt.
S.C.R. Pt. 46, r. 10.

104. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to any money paid under a garnishee order, or to the debt, wage or salary attached by such an order, or to any charge or lien on, or other interest in that money, debt, wage or salary, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and give such judgment or make such order in respect of the claim (including an order barring the claim and an order for the payment into court by a judgment creditor of money received under the garnishee order) as the nature of the case requires.

Payment by garnishee.

105. (1) A payment under a garnishee order shall be made to the registrar, for payment to the judgment creditor, or, if the garnishee before making the payment notifies the judgment debtor that he proposes so to do, may be made to or at the direction of the judgment creditor.

(2)

(2) Payment made by or execution levied upon a garnishee shall satisfy the judgment debt, and be a valid discharge to him as against the judgment debtor, to the extent of the amount paid or levied, notwithstanding that the garnishee order or the judgment may be set aside or the judgment reversed.

Judgment creditor to account for any excess paid by a garnishee.

106. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, he shall forthwith so notify the garnishee and the judgment debtor and on demand made by the judgment debtor pay the excess to the judgment debtor.

Penalty : $200.

(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable by the garnishee or the judgment debtor from the judgment creditor as a debt in any court of competent jurisdiction.

Subdivision 5.—Writ of execution.

Issue of writ of execution.

107. (1) Subject to subsection (2), where a judgment debt arising from an action has not been satisfied, the registrar may, on the application of the judgment creditor supported by the affidavit of the judgment creditor or his solicitor or agent, issue a writ of execution to enforce the judgment in the action.

(2) The registrar shall not, without the leave of the Court granted on application made by the judgment creditor, issue a writ of execution to enforce a judgment—

(a) if a period of twelve years has elapsed since the judgment was given or entered up;

(b)

(b) if since the judgment was given or entered up any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the giving or entering up of the judgment, and the writ of execution is sought against assets of that description;

(d) if an order, or a summons issued under the rules to show cause why an order should not be made, for the issue of a writ to enforce the judgment against the person of the judgment debtor remains in force; or

(e) in the prescribed circumstances.

Priority and duration of writs of execution.

108. (1) The date and time when an application is made to a registrar for the issue of a writ of execution shall be recorded by the registrar and entered by him on the writ, and the bailiff for a proclaimed place who is required, under section 27 (2), to execute more than one writ of execution against the property of a judgment debtor shall execute them in the order of the times so entered.

(2) A writ of execution shall be valid for the prescribed period.

Seizing and taking under writ of execution.

109. (1) The bailiff for a proclaimed place who is required, under section 27 (2), to execute a writ of execution may seize and take under the writ and may cause to be sold—

(a) all the goods, chattels and other personal property, other than chattels real, of or to which the person named in the writ as judgment debtor is or may be

possessed

possessed or entitled, or which he can, either at law or in equity, assign or dispose of, except—

(i) any wearing apparel and any bedroom or kitchen furniture; and

(ii) any ordinary tools of trade, plant and equipment, professional instruments and reference books, not exceeding in the aggregate $500 in value,

being used as such by the judgment debtor or any member of his family; and

(b) subject to this Subdivision, all the land of or to which the person named in the writ as judgment debtor is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff shall, before he causes any property to be sold under a writ of execution, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall cause the sale to be at the place where, in his judgment, those prices are most likely to be obtained.

(3) Where it appears to the bailiff that the property subject to levy under a writ of execution is more than sufficient to satisfy the execution, he shall first cause to be sold so much of the property as appears to him to be sufficient, and if it is not sufficient shall then cause to be sold so much of the property as appears to him to be sufficient to satisfy the balance due under the execution.

(4) The bailiff shall cause property to be sold under subsection (3)—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense;

(b) subject to paragraph (a), in such order as the judgment debtor may direct; and

(c) subject to paragraphs (a) and (b), in such order as seems to the bailiff best for minimising hardship to the judgment debtor or any other person.

(5) Subsections (3) and (4) do not affect any liability of the bailiff to the judgment creditor.

(6) Subject to subsections (3) and (4), any property intended to be sold under a writ of execution shall be put up for sale as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(7) Where a bailiff may cause property to be sold under a writ of execution, the property may be sold by that bailiff or by another bailiff or, in the case of land, by an auctioneer, as referred to in section 111.

(8) Where any property is to be put up for sale under a writ of execution, the bailiff shall cause notice of the writ, of the intended day, time and place of the sale, and of particulars of the property to be published in the prescribed manner.

(9) A bailiff may serve—

(a) on a judgment debtor against whom a writ of execution has been issued; or

(b) on any person who has the custody of any personal property of such a judgment debtor,

a notice in writing informing the person so served that that person is responsible for the safekeeping of such of the personal property of the judgment debtor in his custody as has been seized under the writ of execution.

(10) A person (whether or not he is the judgment debtor), knowing that any personal property has been seized under subsection (1) or is the subject of a notice under subsection (9), shall not, except with the leave of the Court or with the consent in writing of the bailiff by whom the property was seized or by whom the notice was given, interfere with or dispose of any such property or remove any such property from the place at which it was seized or at which it was situated when the notice was served, or cause, permit or suffer any such property to be so interfered with, disposed of or removed.

Penalty : $500.

(11) Nothing in this section affects the provisions of the Judgment Creditors' Remedies Act, 1901.

Special provisions as to execution against land.

110. (1) Subject to section 105 of the Real Property Act, 1900, and section 188 of the Conveyancing Act, 1919, a writ of execution, when delivered to the bailiff required under section 27 (2) to execute it, binds land in like manner as a writ of execution against property binds goods and chattels.

(2) Land shall not be sold under a writ of execution before all the property referred to in section 109 (1) (a) that may be sold under the writ has been sold unless—

(a) the judgment debtor requests that the land be sold before all or any of that property is sold; or

(b) the bailiff is satisfied that the sale of the land before the sale of all or any of that property would minimise hardship to the judgment debtor or any other person.

(3) A bailiff shall not cause land to be sold under a writ of execution except on compliance by the judgment creditor and the bailiff with the prescribed procedures, but a

purchaser

purchaser of the land, and the Registrar-General, shall not be concerned to inquire whether this subsection has been complied with.

(4) The publication under section 109 (8) of notice of the intended sale under a writ of execution of any land shall be deemed to be a seizure by the bailiff of the land under the writ, and no actual seizure of the land shall be necessary in order to authorise the sale thereof under the writ.

(5) Where land that is not under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the registrar for that place shall execute a proper assurance thereof in favour of the purchaser.

(6) Where land that is under the provisions of the Real Property Act, 1900, is sold under a writ of execution by the bailiff for a proclaimed place, the duty imposed on a registrar by section 105 (2) of that Act shall not be performed except by the registrar for that place.

Auctioneers.

111. The rules may make provision for or with respect to—

(a) the appointment of an auctioneer licensed under the Auctioneers and Agents Act, 1941, to sell any land under a writ of execution; and

(b) where an auctioneer is appointed in accordance with the rules—the respective powers, authorities, duties and functions of the auctioneer and the bailiff,

and without affecting the generality of the foregoing provisions of this section, the rules may authorise or require the auctioneer to exercise or perform any power, authority, duty or function of the bailiff in connection with the sale of the land.

112. (1) In this section— Sale or mortgage by judgment debtor of land affected by writ.

"issuing registrar", in relation to a writ of execution, means the registrar for the proclaimed place at which the writ of execution was issued;

"notice of consent" means the notice referred to in subsection (2) (a).

(2) Where land is affected by a writ of execution particulars of which have been recorded in accordance with section 105 of the Real Property Act, 1900, or which has been registered in the register of causes, writs, and orders affecting land in accordance with section 186 of the Conveyancing Act, 1919, and—

(a) the judgment creditor consents, by notice in writing, to the sale or mortgage of the land by the judgment debtor;

(b) the judgment creditor stipulates, in the notice of consent, the minimum amount that should be paid to the issuing registrar out of the proceeds of the sale or the money advanced in respect of the mortgage;

(c) the notice of consent is filed with the issuing registrar; and

(d) the issuing registrar, after due inquiry, endorses the notice of consent with a certificate to the effect that the land has not been sold under the writ,

the endorsement of the notice with that certificate operates to prohibit the sale of the land under the writ during the prescribed period.

(3) Where during that prescribed period—

(a) the judgment debtor sells or mortgages the land;

(b)

(b) in the case of a sale—the amount of the deposit (if any) is paid to the issuing registrar, to be held by him as stakeholder; and

(c) an amount (including any deposit paid to the issuing registrar as referred to in paragraph (b)) that is not less than—

(i) the minimum amount referred to in subsection (2) (b); or

(ii) if the judgment creditor notifies the issuing registrar in writing that he consents to payment of a specified amount that is less than that minimum amount—that specified amount,

is paid to the issuing registrar out of the proceeds of the sale or money advanced in respect of the mortgage,

any liability of the purchaser or mortgagee for payment to the judgment debtor of those proceeds or that money is extinguished to the extent of the amount so paid to the issuing registrar, and the issuing registrar shall, upon production to him of the instrument evidencing the sale or mortgage, and if he is satisfied as to the matters referred to in paragraphs (a), (b) and (c), endorse the instrument with his consent to the sale or mortgage.

(4) The interest of the purchaser or mortgagee evidenced by the instrument endorsed with the issuing registrar's consent shall not, in relation to the land, be affected by anything done or purporting to have been done, whether before or after the endorsement of the consent, under the writ of execution.

(5) The amount paid to the issuing registrar, as referred to in subsection (3) (c), shall, subject to and in accordance with the rules—

(a) be paid to or at the direction of the judgment creditor; and

(b) be in reduction of the judgment debt.

Subdivision

Subdivision 6.—Writ against the person.

Writ against the person.

113. (1) Where the Court is satisfied on the application of a judgment creditor that—

(a) the judgment debt arising from an action has not been satisfied; and

(b) the judgment debtor is about to leave the Commonwealth, or to remove any property from the Commonwealth, with intent to evade payment of the judgment debt,

the Court may, if it thinks fit, authorise the registrar to issue a writ against the person of the judgment debtor to enforce payment of the judgment debt and the registrar shall, on being so authorised, issue the writ.

(2) A writ against the person of a judgment debtor shall—

(a) be under the hand of the registrar by whom it is issued;

(b) name or otherwise describe the judgment debtor whose arrest and imprisonment is required by the writ;

(c) order the bailiff, required under section 27 (2) to execute it, to arrest the judgment debtor if he is within New South Wales and to deliver him to the governor of the prison to whom it is directed;

(d) order the governor of the prison to whom it is directed to keep him in custody until discharged in accordance with law; and

(e) continue in force until the judgment debtor is so discharged or, if the judgment debtor is not arrested, until it expires in accordance with the rules,

and may lawfully be executed on a Sunday.

(3) Any member of the police force shall, if called upon by the bailiff to do so, aid and assist in the execution of a writ against the person.

(4) The arrest or imprisonment of a judgment debtor under a writ against the person shall not operate as a satisfaction of the judgment debt or any part thereof, but the issue of the writ shall, except as provided in this Subdivision, operate as a stay of enforcement of the judgment until the writ ceases to be in force.

(5) In this section, "the Commonwealth" includes any part of the Commonwealth within the meaning of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth, as subsequently amended.

Discharge of judgment debtor.

114. (1) A judgment debtor arrested or imprisoned under a writ against the person shall be discharged from custody under the writ on payment of the amount specified in the writ as being due under the judgment and the costs of executing the writ, and any bailiff, and the governor of any prison, in whose custody the judgment debtor is under the writ, are hereby empowered and required to receive that amount and those costs if tendered, and to transmit them to the registrar for the proclaimed place at which the writ was issued.

(2) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the registrar for the proclaimed place at which the writ was issued a request in writing for the discharge of the judgment debtor from custody, the registrar shall, as soon as practicable after receipt of the request, issue a notice requesting the discharge of the judgment debtor and send or deliver the notice to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ, and the bailiff or governor of the prison shall on receipt of the notice forthwith discharge the judgment debtor from custody under the writ.

(3) Where the judgment creditor on whose application a writ against the person of a judgment debtor is issued sends or delivers to the bailiff or governor of the prison in whose custody the judgment debtor is under the writ a request in writing for the discharge of the judgment debtor, the bailiff or governor of the prison shall on receipt of the request forthwith discharge the judgment debtor from custody under the writ.

(4) Where a judgment debtor makes application to the governor of the prison in whose custody he is under a writ against the person for his discharge from that custody, the governor shall as soon as practicable cause the judgment debtor to be brought before the Court at the most convenient proclaimed place for the purpose of making his application to the Court, and on hearing any such application the Court may, if it thinks fit, order, on terms, that the judgment debtor be discharged from custody under the writ.

(5) Where a judgment debtor is discharged by virtue of subsection (2), (3) or (4) from the custody in which he is held under a writ against the person, the discharge from custody shall not operate as a satisfaction of the judgment debt or any part thereof.

DIVISION 5.—*Actions: Interpleader.*

Interpleader by defendant or bailiff.

115. (1) An application may be made for relief by way of interpleader—

(a) by a defendant in an action for or in respect of any debt, money, goods or chattels to which some third party makes a claim; or

(b) by a bailiff if a claim is made to any money, goods or chattels, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the writ issued.

(2) An application under subsection (1)—

(a) by a defendant in an action shall be made to the registrar for the proper place in relation to the action; or

(b) by a bailiff, required under section 27 (2) to execute a writ of execution, shall be made to the registrar for the proclaimed place for which he is bailiff.

(3) Where the application is made by the defendant, it shall be supported by an affidavit showing—

(a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;

(b) that the applicant does not collude with the person making a claim as referred to in subsection (1) (a); and

(c) that the applicant is willing to pay or transfer the subject-matter in dispute into court or, if the registrar so requires, to give security to the value of the subject-matter to the satisfaction of the registrar.

Claim to property taken or intended to be taken in execution.

116. (1) Where—

(a) a person, other than the person against whom a writ of execution is issued, makes to the bailiff a claim to any money, goods or chattels (in this section referred to as "the property") taken or intended to be taken in execution under the writ;

(b) the judgment creditor has not, in accordance with the rules, directed the bailiff to withdraw from possession of the property, or not to seize the property, as the case may require; and

(c) the property has not been sold under the writ,

then—

(d) where, whether or not a notice referred to in paragraph (e) is given to the claimant and whether or not the period specified in the notice has expired, the claimant pays to the bailiff an amount equal to the value of the property or gives the bailiff security to that value—the property shall thereupon be released from execution under the writ and the bailiff shall make an application for relief by way of interpleader under section 115 in respect of the amount so paid or the security so given; or

(e) where the claimant neither pays that amount nor gives that security before the expiration of a reasonable period specified in a notice given by the bailiff to the claimant for the purposes of this subsection —the bailiff—

(i) may make an application for relief by way of interpleader under section 115 in respect of the property; or

(ii) may, subject to paragraph (d), sell the property as if the claim had not been made, and shall make an application under section 115 for relief by way of interpleader in respect of the proceeds of the sale as if the claim had been made to those proceeds.

(2) The rules may require that a claim referred to in subsection (1) be verified by affidavit of the claimant.

(3) The amount of the value and the nature of the security referred to in subsection (1) shall be as may be agreed upon between the claimant and the bailiff, or where they have not agreed be as determined by some competent person appointed by the registrar, and the costs of the determination shall in the first instance be payable by the claimant.

(4) Any amount paid to the bailiff as referred to in subsection (1) (d), and the proceeds of any sale under subsection (1) (e) (ii), shall as soon as practicable thereafter be paid by the bailiff to the registrar to whom the bailiff's application for relief by way of interpleader is made, and shall be paid out by the registrar in accordance with the order of the Court.

Where application for relief made.

117. (1) Upon an application being made to a registrar under section 115, the registrar shall issue a summons calling upon the claimant to state the nature and particulars of his claim in such form and within such time as may be prescribed.

(2) Upon the issue of the summons and, where the application for relief is made by the defendant, upon the payment of the amount of the claim, or the transfer of the property the subject of the claim, into court, or, if the registrar so requires, upon the defendant giving security to the value of that property, all proceedings in the action and in any other action which may have been brought in the Court, the Supreme Court or any court of petty sessions in respect of the claim shall be stayed.

(3) If the claimant complies with the summons, the registrar shall record the commencement of an interpleader action and issue notice of that action to the claimant and to

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the execution creditor or the plaintiff in the original action, and the Court shall adjudicate upon the claim, and—

(a) make such order between the parties in respect thereof, of the costs of the proceedings and of the continuance of the actions in which proceedings have been stayed; and

(b) where any amount has been paid, or security has been given, to a bailiff in respect of property the subject of the claim, or the property has been sold under section 116 (1) (e) (ii), make such order with respect to the payment of the amount, or the enforcement or discharge of the security, or the proceeds of sale of the property,

as may to it seem fit.

(4) An order made under subsection (3) may be enforced in the same manner as a judgment in an action.

(5) If the claimant fails to comply with the summons—

(a) the stay of proceedings shall be removed;

(b) any money paid, or any property the subject-matter of an action transferred, by a defendant into court under subsection (2) shall be paid or transferred by the registrar to the plaintiff; and

(c) the claimant shall be forever barred from prosecuting any claim in respect of the subject-matter of the action, or the property the subject of the claim made to the bailiff, as the case may be,

unless the Court otherwise orders upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed, and where any money has been paid into court by the bailiff or any security has been given to the bailiff or registrar in respect of the property the subject of

the

the claim or the subject-matter of the action the Court may make such order with respect to the payment of that money or the enforcement or discharge of that security as it thinks fit.

(6) The rules may make provision for or with respect to the practice and procedure of the Court in relation to interpleader actions.

Adverse titles.

118. Relief by way of interpleader may be granted though the titles of the persons claiming to the money, goods or chattels in question, or to the proceeds or value thereof have not a common origin, but are adverse to and independent of each other.

DIVISION 6.—*Actions: Costs.*

Interpretation: Pt. III, Div. 6.

119. In this Division, "costs" means costs payable between party and party, and includes disbursements.

Costs in discretion of Court or follow event.

120. Subject to section 124, the costs of any action, including the costs of any proceedings ancillary to the action, shall be paid by or apportioned between the parties in such manner as the Court in its discretion orders and, in default of any such order, shall, except where otherwise provided by the rules, follow the event of the action.

Agreement as to costs.

121. Where—

(a) a party's costs, or any part thereof, in an action are required to be paid by another party;

(b)

(b) the parties agree upon the amount of those costs; and

(c) the agreement is evidenced to the registrar in the prescribed manner,

the amount of those costs shall be as so agreed upon.

Taxation of costs.

122. (1) Where—

(a) a party's costs in an action are required to be paid by another party; and

(b) an agreement as to the amount of those costs is not entered into and evidenced as required by section 121,

the amount of those costs shall be as determined—

(c) except as provided by paragraph (d), by taxation, in accordance with the rules, by the registrar for the proper place in relation to the action; or

(d) if the action is within a prescribed class of actions and if the Court so orders on the application of any party or without any such application—by taxation, in accordance with the rules, by the registrar for Sydney.

(2) On a taxation of costs—

(a) no item shall be allowed that is not authorised by the rules; and

(b) where an item is allowed, the amount to be allowed for the item shall, subject to subsection (3), be the amount specified in the rules in relation to items of the class to which that item belongs.

(3)

(3) The rules may require that costs payable in any action be reduced by reference to the amount recovered in the action or otherwise.

(4) A taxation of costs may be reviewed by the Court in accordance with the rules.

Costs form part of judgment debt.

123. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

Limitations on costs.

124. (1) If in any action which could have been brought in a court of petty sessions but which is brought in the Court—

(a) the plaintiff recovers a total amount which does not exceed $100 by payment by or on behalf of the defendant without judgment; or

(b) judgment is given or entered up in favour of the plaintiff for an amount which does not exceed $100,

the plaintiff shall not be entitled to recover any costs in the action unless the Court certifies that it appears to it that there was a sufficient reason for bringing or trying the action in the Court.

(2) Subsection (1) does not apply in respect of an action in which judgment is given or entered up for an amount which does not exceed $100 but which would have exceeded $100 but for—

(a) any verdict against the plaintiff on any cross-claim pleaded by the defendant; or

(b) any reduction of the damages due to the plaintiff under Part III of the Law Reform (Miscellaneous Provisions) Act, 1965,

or but for both such a verdict and such a reduction.

(3) No fees to barristers or solicitors shall be allowed in any action for the recovery of a debt or liquidated demand if—

(a) the amount sued for does not exceed $250; and

(b) the defendant does not file notice of the grounds of his defence under section 56.

DIVISION 7.—*Actions: New Trial and Appeal.*

125. In this Division, "action" includes interpleader action. Interpretation: Pt. III, Div. 7.

126. (1) The Court in its discretion may, after judgment in an action, order that a new trial of the action be had if— Order of the Court for new trial.

(a) the parties to the action consent; or

(b) the action is tried with a jury and on the day on which the jury gives its verdict in the action a party to the action—

(i) in the presence of the other party; or

(ii) in the absence of the other party but after such notice as the Court thinks reasonable has been given to the other party,

makes application for the order.

(2) The Court may, before judgment in an action and if no verdict in the action has been entered, order, on sufficient cause being shown, that the hearing of the action be discontinued and that a new trial be had.

127. (1) Subject to section 130, where, after judgment in an action, an order has not been made under section 126 (1) in respect of the action, an application for a new trial in respect of the action may be made to the Supreme Court. Application to Supreme Court for new trial.

(2)

(2) On an application under this section in respect of an action, the Supreme Court may order a new trial of the action or of any issue therein or may refuse to make such an order.

(3) An application under this section shall be deemed to be an appeal to which sections 106 and 107 of the Supreme Court Act, 1970, apply.

(4) Without affecting the generality of subsection (2), the Supreme Court may order a new trial under this section on the ground that a verdict, finding or assessment of the Judge, whether sitting with or without a jury, is against the evidence and the weight of evidence.

(5) An application under this section shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Appeal to Supreme Court.

128. (1) Except in the case of an action of the nature mentioned in subsection (2), an appeal shall, subject to sections 129 and 130, lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, in an action.

(2) In the case of an action in which the relief sought or granted includes an injunction under section 46, an appeal shall lie to the Supreme Court from the ruling, order, direction or decision of the Judge in point of law, or upon the admission or rejection of any evidence, or upon the determination of any question of fact, in the action.

(3) In an appeal under subsection (1) or (2), the Supreme Court—

(a) if it is of the opinion that a nonsuit should have been ordered at the trial—may order a nonsuit;

(b) if it is of the opinion that upon the evidence any party is as a matter of law entitled to a verdict in the action or upon any issue therein—may give that verdict and may order that such judgment be entered as is appropriate to that verdict; or

(c) may order that a new trial of the action or of any issue therein be had,

or may refuse to make such an order or give such a verdict.

(4) In an appeal under subsection (2), the Supreme Court may grant, refuse, vary or rescind any injunction relative to the action.

(5) Where no injunction under section 46 is granted in an action in which the relief sought includes such an injunction, the Supreme Court may, if it thinks fit, refuse to entertain an appeal under subsection (2) in relation to the action if it is of the opinion that the injunction was sought only for the purpose of securing the right to appeal under subsection (2).

(6) An appeal under subsection (1) or (2) shall be made in such manner and be subject to such conditions as may be prescribed by rules of the Supreme Court.

Agreement not to appeal.

129. An appeal shall not lie under section 128 (1) from any ruling, order, direction or decision of the Court if before the ruling, order, direction or decision is pronounced the parties agree in writing, signed by themselves or their solicitors, that the ruling, order, direction or decision shall be final.

Whether application or appeal to Supreme Court is as of right.

130. (1) An application under section 127 may be made or an appeal under section 128 (1) lies—

(a) where the application or appeal involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of $1,000 or upwards—as of right; or

(b) in any case—by leave of the Supreme Court.

(2) An appeal under section 128 (2) lies as of right.

Stay of proceedings on an application or appeal to Supreme Court.

131. (1) Where—

(a) after judgment in an action the Court orders that proceedings be stayed during the period within which an application under section 127 may be made or an appeal under section 128 may be brought; and

(b) during that period—

(i) such an application is made or such an appeal is brought in respect of those proceedings; and

(ii) security is given to the satisfaction of the registrar for the amount of the judgment debt (if any) payable by the applicant or appellant, including an amount assessed by the registrar in respect of any costs forming part of the judgment debt,

the

the stay of proceedings shall continue until the application or appeal is disposed of or until the Court or the Supreme Court otherwise orders.

(2) Except as provided in this section or as directed by the Supreme Court, an application or appeal referred to in subsection (1) shall not operate as a stay of proceedings.

(3) This section does not affect the operation of section 156 (3).

DIVISION 8.—*Miscellaneous Jurisdiction.*

Subdivision 1.—*General.*

Non-application of Divs. 2-7.

132. Subject to this Act and the rules, nothing in Divisions 2 to 7 (inclusive) applies to or in respect of any proceedings under this Division.

Subdivision 2.—*Possession of land and equity proceedings.*

Jurisdiction in proceedings for possession of land.

133. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for possession of land the value of which does not exceed $10,000, as determined by the Court.

(2) Nothing in subsection (1) applies in respect of proceedings under the Landlord and Tenant Act, 1899.

134.

Jurisdiction in equity proceedings.

134. (1) The Court shall have the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings for—

(a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien where the amount owing in respect of the mortgage, charge or lien does not exceed $5,000, as determined by the Court;

(b) the specific performance, rectification, delivery up or cancellation of any agreement for—

(i) the sale or purchase of any property at a price not exceeding $5,000; or

(ii) the lease of any property the value of which does not exceed $5,000, as determined by the Court;

(c) an order under section 3 of the Testator's Family Maintenance and Guardianship of Infants Act, 1916;

(d) relief against fraud or mistake where the damage sustained or the estate or fund in respect of which relief is sought does not exceed $5,000 in amount or value, as determined by the Court;

(e) the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed $5,000 in amount or value, as determined by the Court; or

(f) the administration of the estate of a deceased person, where the estate does not exceed $5,000 in amount or value, as determined by the Court.

(2)

(2) In any proceedings pursuant to subsection (1) (c), the Court shall not have power to make an order for provision under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, that will or may result in the amount of provision so made exceeding $5,000.

Commencement of proceedings.

135. (1) Proceedings in the Court for possession of land shall be commenced at the nearest proclaimed place to the place in New South Wales where the land or any part of the land is situated.

(2) Proceedings in the Court under section 134 shall be commenced at the nearest proclaimed place to the place in New South Wales—

(a) in the case of proceedings pursuant to section 134 (1) (a) or (b)—

(i) where the mortgage, charge or lien is of or over land or the agreement is in respect of the sale, purchase or lease of land—where a defendant is resident or carries on business or where the land or any part of the land is situated; or

(ii) in any other case—where a defendant is resident or carries on his business;

(b) in the case of proceedings pursuant to section 134 (1) (c) or (f)—

(i) where the deceased person last resided; or

(ii) where an executor or administrator is resident or carries on his business; or

(c) in the case of proceedings pursuant to section 134 (1) (d) or (e)—where a defendant is resident or carries on his business.

Proceedings commenced at wrong proclaimed place.

136. Where proceedings under this Subdivision, not being proceedings transferred to the Court under section 143 (2), are commenced at a proclaimed place that is not a place at which they ought, under section 135, to have been commenced, the Court may, on the application of a party to the proceedings or without any such application—

(a) order that the proceedings be continued in the Court notwithstanding that they were commenced at that place;

(b) order a change of venue of the proceedings, under section 40, to such other proclaimed place as the Court thinks proper; or

(c) strike out the proceedings.

Powers of the Court under this Subdivision.

137. In relation to proceedings under this Subdivision—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof in the like circumstances;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable in the like circumstances; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of any judgment or order of the Court in those proceedings.

Rules.

138. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings;

(b) the costs of any such proceedings; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

Appeal.

139. Division 7 applies to and in respect of proceedings under this Subdivision in the same way as if they were an action.

Subdivision 3.—*Temporary injunctions.*

Temporary injunctions

140. (1) The Court shall have jurisdiction to grant an injunction, to be called a temporary injunction, to restrain—

(a) a threatened or apprehended trespass or nuisance; or

(b)

(b) the breach of a negative stipulation in a contract the consideration for which does not exceed $5,000,

in like manner, subject to this Subdivision, as the Supreme Court might grant an interlocutory injunction in like circumstances.

(2) Subject to this Subdivision, a temporary injunction shall continue in force for a specified period not exceeding fourteen days, but if the specified period is less than fourteen days, it may be renewed from time to time, but so that the total period for which the temporary injunction is in force does not exceed fourteen days.

(3) A temporary injunction may be renewed so that the total period for which it is in force exceeds fourteen days if the Court is satisfied that the additional time is required to enable proceedings to be commenced or heard in the Supreme Court in relation to the matter.

(4) A temporary injunction shall cease to be in force if—

(a) the Court, on the application of a party, so orders; or

(b) the Supreme Court, on the application of a party, so orders, whether or not the Supreme Court grants an injunction or gives any other relief in relation to the matter.

(5) Proceedings for a temporary injunction may be commenced at any proclaimed place, not being a prescribed proclaimed place.

(6) A temporary injunction may be renewed by the Court only where it is sitting at a proclaimed place that is not a prescribed proclaimed place.

(7) A reference in this section to the renewal of a temporary injunction includes a reference to the grant of another temporary injunction in respect of the same matter by the Court, whether before or after the expiry of the first-mentioned injunction.

Powers of Court under this Subdivision.

141. With respect to temporary injunctions—

(a) the Court and the Judges shall, in addition to the powers and authority otherwise conferred on it and them, have all the powers and authority of the Supreme Court and the Judges thereof with respect to the granting of interlocutory injunctions;

(b) the appropriate officer of the Court shall, in addition to the duties otherwise imposed on him, discharge—

(i) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge with respect to interlocutory injunctions; and

(ii) any duty imposed on him by the rules or by any order of the Court;

(c) the practice and procedure of the Court shall, so far as practicable and subject to this Act and the rules, be the same as the practice and procedure of the Supreme Court applicable with respect to the granting of interlocutory injunctions; and

(d) without affecting the generality of the foregoing provisions of this section, the powers, authority and duty conferred by paragraphs (a) and (b), and the practice and procedure of the Court referred to in paragraph (c), shall, subject to the rules, extend to the enforcement of a temporary injunction and any order of the Court made in connection with proceedings for the granting of the temporary injunction.

142.

Rules.

142. Without affecting the generality of any other provision of this Act authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed with respect to the granting and enforcing of temporary injunctions;

(b) the costs of proceedings in the Court in relation to temporary injunctions; and

(c) any other matter necessary or convenient for giving effect to this Subdivision.

DIVISION 9.—*Transfer of Proceedings from or to Supreme Court.*

Subdivision 1.—*Transfer of proceedings from Supreme Court.*

Transfer of proceedings from Supreme Court.

143. (1) Where any proceedings that are pending in the Supreme Court could have been commenced as an action in the Court, and pleadings in the Supreme Court have closed, and the claim in the proceedings—

(a) does not exceed $3,000; or

(b) though it originally exceeded $3,000, is reduced by payment, an admitted set-off or otherwise to an amount not exceeding $3,000,

and the whole or part of the demand of the plaintiff is contested, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(2) Where any proceedings that are pending in the Supreme Court could have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, on the application of any party, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

144.

144. (1) Where the Supreme Court makes an order under section 143 (1) for the transfer of any proceedings to the Court sitting at a proclaimed place— Procedure on transfer.

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings in the proceedings with the registrar for that place and, if the plaintiff does not lodge those copies within ten days after the entry of the order, the defendant may lodge them with the registrar;

(b) when the copies have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become an action in the Court to try the issues raised by the pleadings and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with Division 6; and

(ii) as regards costs of the order, copies of the order and pleadings, and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

(2) Where the Supreme Court makes an order under section 143 (2) for the transfer of any proceedings to the Court sitting at a proclaimed place—

(a) the plaintiff shall lodge a copy of the order and a copy of the pleadings (if any) in the proceedings with the registrar for that place and, if the plaintiff does not lodge that copy or those copies, as the case may be, within ten days after the entry of the order, the defendant may lodge it or them with the registrar;

(b) when the copy or copies, as the case may be, has or have been lodged under paragraph (a), the proceedings shall—

(i) cease to be proceedings in the Supreme Court; and

(ii) become proceedings in the Court and be continued in the Court as if originally commenced in the Court at that proclaimed place; and

(c) any costs payable in respect of the proceedings shall—

(i) as regards costs of work done after the making of the order—be allowed in accordance with the rules made in pursuance of section 138 (b); and

(ii) as regards costs of the order, copies of the order and pleadings (if any), and work done before the making of the order—be allowed, subject to any order of the Supreme Court, according to the scale of costs in the Supreme Court.

Subdivision

Subdivision 2.—Transfer of proceedings to Supreme Court.

Transfer of proceedings to Supreme Court.

145. Proceedings may, upon the application of a party, be removed into the Supreme Court by order of the Supreme Court upon such terms as to payment of costs, giving security for the amount claimed or costs, or otherwise, as the Supreme Court thinks fit.

Stay of proceedings on application for order.

146. (1) Where an application is pending in the Supreme Court for an order of removal or prohibition relating to any proceedings, the Supreme Court may make orders for a stay of the proceedings until the determination of the application or until the Supreme Court otherwise orders.

(2) An order for a stay of proceedings made under subsection (1) shall take effect immediately a copy of the order is served by the party who obtained the order upon the registrar for the proper place in relation to the action.

Transfer of proceedings under Subdivision 2 of Division 8 to Supreme Court.

147. (1) If, during the progress of any proceedings under Subdivision 2 of Division 8, the Court decides that it lacks the jurisdiction to hear and dispose of those proceedings by reason that the subject-matter exceeds in amount or value—

(a) in the case of proceedings under section 133—$10,000; or

(b) in the case of proceedings under section 134—$5,000,

the validity of any order already made in the proceedings shall not be affected by that decision, and—

(c) the Court shall order that the proceedings be transferred to the Supreme Court, and, unless any order is made under paragraph (d), the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court; and

(d)

(d) the Supreme Court may, on the application of any party, order that the proceedings be continued in the Court as if the order under paragraph (c) had not been made and as if the subject-matter did not exceed in amount or value the amount mentioned in paragraph (a) or (b), as the case may require.

(2) Subject to subsection (1), the Court may, during the progress of any proceedings under Subdivision 2 of Division 8, for any reason that appears to it to be sufficient, order that the proceedings be transferred to the Supreme Court, and—

(a) the validity of any order already made in the proceedings shall not be affected by the order for transfer; and

(b) the proceedings shall be continued in the Supreme Court, subject to any order of the Supreme Court as to procedure, as if they had been commenced in the Supreme Court.

Removal of proceedings otherwise.

148. Proceedings shall not, except as provided by this Act, be removed out of the Court by appeal, motion, order or otherwise.

DIVISION 10.—*Miscellaneous Provisions.*

Costs where no jurisdiction.

149. Where any proceedings purport to be commenced in the Court and the Court has no jurisdiction to hear and dispose of the proceedings, the Court may, notwithstanding the lack of jurisdiction, make such order (if any) as it thinks fit for the payment by any party to any other party of the costs of the proceedings in the Court, and any such order for costs may be enforced as if the Court had had jurisdiction to hear and dispose of the proceedings.

150.

Regulations: Court fees.

150. (1) The Governor may make regulations for or with respect to fees to be paid in respect of the business of the Court.

(2) Different regulations may be made under this section to apply in different circumstances.

Fees form part of Consolidated Revenue Fund.

151. All fees received by a registrar under this Act shall be paid by him to the Treasurer for payment to the Consolidated Revenue Fund.

Unclaimed money.

152. (1) An amount which—

(a) was paid to a registrar for or on account of or for the use or benefit of any party to any proceedings; and

(b) remains unclaimed in the hands of the registrar for one year after a party to the proceedings becomes entitled to claim the amount,

shall be paid by the registrar to the Treasurer and placed to the credit of the Special Deposits Account in the Treasury.

(2) Section 30 of the Audit Act, 1902, does not apply to any amount referred to in subsection (1) of this section, but section 31 of that Act applies to any amount placed to the credit of the Special Deposits Account under subsection (1) of this section as if the amount had been so placed under section 30 of that Act.

Proceedings for offences.

153. (1) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

(2)

(2) Nothing in subsection (1) applies in respect of the imposition of a fine under section 64 or 65.

Offences by corporations.

154. Where a person convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence was an officer of the corporation shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for the offence accordingly, if he knowingly and wilfully authorised or permitted the commission of the offence.

Civil remedy not affected by proceedings for an offence.

155. Notwithstanding any proceedings against a person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.

Miscellaneous powers of Court in respect of proceedings, etc.

156. (1) Subject to section 36, the Court may, on terms, adjourn any sittings or the trial of any proceedings in such manner as the Court thinks fit.

(2) The Court may give directions as to the orderly transaction of the business of the Court in relation to any proceedings.

(3) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

(4)

(4) Nothing in this section limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or law to adjourn any sittings or trial, or to give directions or to stay proceedings.

Service of documents.

157. Service of a document for the purposes of or in relation to any proceedings shall be effected by a person prescribed in respect of the class of document to which that document belongs, and may be effected by delivering a copy of the document to the person on whom the document is to be served or in such other manner as may be prescribed.

Directions where no procedure provided.

158. If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under this Act or the law under which the step is to be taken or by the practice of the Court, the Court may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall for the purposes of the proceedings be regular and sufficient.

Irregularity. No. 52, 1970, s. 81.

159. (1) Where, in the purported commencement of any proceedings or at any stage in the course of or in connection with any proceedings, there is, by reason of anything done or left undone, a failure to comply with any requirement of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect—

(a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings; and

(b)

(b) subject to subsections (2) and (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings, or exercise its powers under the rules to allow amendments and to make orders dealing with the proceedings generally.

(2) The Court shall not wholly set aside any proceedings on the ground that although not constituting an action for the recovery of a debt or liquidated demand they were commenced by the lodging of a statement of liquidated claim.

(3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection (1) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

Officer acting for corporation.

160. For the purposes of this Act, a corporation may, subject to and in accordance with the rules, authorise an officer of the corporation to sign any document, or do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be deemed to be signed or done by the corporation.

DIVISION 11.—*Rules.*

Rules.

161. (1) The Chief Judge and any four other Judges may make rules for or with respect to—

(a) the procedure (including the method of pleading) and the practice to be followed in the Court in any proceedings (including the procedure and practice

to

to be followed in the offices of the Court) and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any application or appeal which under this or any other Act or Commonwealth Act is to be made to the Court or a registrar;

(b) any matter which, under any Act, may be regulated or prescribed by rules of the Court, or by rules made by the Judges or a majority of Judges or any number of Judges or a Judge;

(c) the joinder of causes of action, the consolidation of proceedings and the joinder, misjoinder and non-joinder of parties;

(d) the continuance of proceedings on the death or bankruptcy of any party or otherwise;

(e) the pleading of cross-claims (whether in the nature of set-off, cross-action or otherwise);

(f) regulating, or empowering a registrar to regulate, the order of business of the Court sitting at any proclaimed place and empowering a Judge or a registrar to give directions as to the steps to be taken to make any proceedings ready for trial, and for this purpose authorising a registrar to exercise the powers of the Court under section 69 (1) (b);

(g) the hearing of proceedings during vacation;

(h) the duties of, and the records to be kept by, the registrars and other officers of the Court in relation to or for the purpose of any proceedings;

(i) any matters relating to the costs of proceedings;

(j) any matters relating to the taxation or other ascertainment of costs payable by a party to another party in proceedings in the Court, including the fixing of scales of costs and witnesses' expenses so payable;

(k) the practice and procedure to be followed in the enforcement of judgments and orders of the Court;

(l) the evidence that may be given at the trial of any proceedings by affidavit, and the circumstances in which evidence may be so given, but so as not to dispense with the attendance of any witness whose attendance for cross-examination is required by any party to the proceedings, and the means by which particular facts may be proved, and the mode in which evidence may be given, in any proceedings;

(m) matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence;

(n) prescribing the cases in which security may be required in respect of any proceedings, and the form of any such security, and the manner in which it is to be given, or whether it is to be given to the satisfaction of the registrar;

(o) the payment of money into or out of the Court;

(p) the times for doing any matter or thing for the purposes of this Act or the rules in or in connection with any proceedings;

(q) the giving of notices required by or under this Act to be given;

(r) the amendment, whether by a party or by order of the Court, of any document filed by a party;

(s) the striking out, by order of the Court, of the whole or any part of a statement of claim or a document filed by a party; and

(t) all matters that by this Act (sections 150 and 171 excepted) are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The rules may make provision for or with respect to the bringing of money into court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to—

(a) prescribing the manner in which money may be so brought into court;

(b) without affecting the generality of paragraph (a), deeming money to be brought into court if there is filed a security given by a licensed insurer under the Workers' Compensation Act, 1926, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942;

(c) requiring the insurer who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the insurer; and

(d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into court.

(3) Different rules may be made to apply in different circumstances.

(4) After the commencement of this Act no power conferred by any Act upon the Judges or a majority of Judges or any number of Judges or a Judge to make rules shall be exercised otherwise than by the Chief Judge and any four other Judges making in respect of that matter rules under and in accordance with this Act.

(5) Any rules made under any power conferred upon the Judges or a majority of Judges or any number of Judges or a Judge by any Act (other than this Act and the District Courts Act, 1912), and in force immediately before the commencement of this Act shall continue in force as though made under this Act.

Gazettal and Parliamentary review.

162. (1) A rule shall—

(a) be published in the Gazette;

(b) take effect on and from the date of publication or a later date specified in the rule; and

(c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice.

163. Judicial notice shall be taken—

(a) of a rule made or purporting to have been made under this Act and published in the Gazette; and

(b) of the date of its publication.

Conditions precedent.

164. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

PART

PART IV.

THE CRIMINAL AND SPECIAL JURISDICTION OF THE COURT.

Interpretation: Pt. IV.

165. In this Part—

"appointed place" means place for the time being specified in a proclamation under section 172;

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act.

Criminal and special jurisdiction of the Court.

166. The Court shall have jurisdiction in respect of all crimes and misdemeanours (other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955), and generally shall have the same jurisdiction and authority, civil and criminal, as each Court of Quarter Sessions had immediately before the commencement of this Act.

Abolition of Courts of Quarter Sessions.

167. Subject to section 194, Courts of Quarter Sessions are abolished.

References to Courts of Quarter Sessions.

168. (1) A reference in any instrument to a Court of Quarter Sessions shall be read and construed as a reference to the Court in its criminal and special jurisdiction.

(2) In subsection (1), the reference to a Court of Quarter Sessions includes a reference to a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.

169.

Judges.

169. (1) A Judge exercising the criminal and special jurisdiction of the Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions would have had, in relation to the like proceedings in a Court of Quarter Sessions, had this Act not been enacted.

(2) A Judge exercising the criminal and special jurisdiction of the Court shall be the sole Judge at the trial of all civil or criminal issues therein, and at the hearing of any application, or the making of any order in reference thereto, and in all other matters relating to the exercise of that jurisdiction.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall be read and construed as a reference to a Judge exercising the criminal and special jurisdiction of the Court.

Clerk of the Peace.

170. The Clerk of the Peace has, in relation to the Court in its criminal and special jurisdiction and to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as he had, in relation to Courts of Quarter Sessions and to proceedings in those Courts, immediately before the commencement of this Act.

Regulations: practice and procedure.

171. (1) The Governor may make regulations for or with respect to regulating and prescribing the practice and procedure of the Court in relation to any proceedings in the Court in its criminal and special jurisdiction.

(2) The regulations made under this section may provide that any provisions of this Act that would, but for this subsection, not apply to or in respect of any proceedings in the Court in its criminal and special jurisdiction shall, to the extent specified in the regulations so made, apply to or in respect of those proceedings.

(3)

(3) The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the Court in its criminal and special jurisdiction or any documents that may be or are issued by or in respect of the Court in that jurisdiction, have effect subject to the regulations made under this section.

(4) Different regulations may be made under this section to apply in different circumstances.

Appointed places.

172. (1) In this section, "place" means city, town or other place.

(2) The Governor may, by proclamation, specify the places at which the Court may sit in its criminal and special jurisdiction.

Directions as to sittings.

173. The Governor may, by proclamation, direct that the Court shall sit in its criminal and special jurisdiction at a specified appointed place at specified times.

General provisions as to sittings.

174. (1) Subject to this Part—

(a) the Court may sit simultaneously at different appointed places in its criminal and special jurisdiction;

(b) a Judge shall preside at such sittings of the Court in its criminal and special jurisdiction at such appointed places as the Chief Judge may from time to time direct; and

(c) two or more Judges may preside simultaneously at separate sittings of the Court in its criminal and special jurisdiction at the one appointed place.

(2) Where a sitting of the Court in its criminal and special jurisdiction is to be held and the Judge who is to preside at that sitting is not present at the time appointed for the sitting to commence, any justice of the peace may adjourn the sitting to such time as the justice deems convenient.

Hearing of appeals at proclaimed places.

175. Notwithstanding anything in this Part, a Judge sitting at any proclaimed place may, whether or not that proclaimed place is an appointed place, hear and dispose of any appeal made to the Court in its criminal and special jurisdiction.

PART V.

General Provisions.

Order to Judge or officer.

176. If a Judge or officer of the Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring the act to be done, by order direct the Judge or officer to do the act.

Privilege.

177. No privilege shall be allowed to any barrister, solicitor or other person to exempt him from the provisions of this Act.

Proclamations.

178. (1) In this section, "proclamation" means proclamation under this Act, not being the proclamation under section 2.

(2) A power conferred by any provision of this Act to make a proclamation includes the power to revoke or amend that proclamation from time to time.

(3) A proclamation shall—

(a) be published in the Gazette; and

(b) take effect on and from the date of publication or a later date specified in the proclamation.

Judges to meet and make recommendations.

179. (1) The Judges shall assemble at least once in every six months for the purpose of—

(a) considering the operation of this Act and the rules;

(b) considering the working of the offices of the Court; and

(c) inquiring into and examining any defects which appear to exist in the system of procedure or the administration of justice in the Court.

(2) The Judges shall at least once in every six months furnish a report to the Attorney-General as to what (if any) legislation or rules, regulations, by-laws or ordinances it would, in their judgment, be expedient to enact or make for the better administration of justice in the Court.

PART VI.

Repeals, Amendments, Savings and Transitional Provisions.

Division 1.—*General.*

Repeals.

180. Each Act mentioned in Schedule 1 is repealed.

Amendments.

181. Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

182.

Non-revivor. No. 52, 1970, s. 9.

182. A repeal made by section 180 or an amendment made by section 181 shall not revive anything not in force or existing immediately before the commencement of this Act.

Operation of Interpretation Act, 1897.

183. Except as provided in this Part, nothing in this Part limits any saving in the Interpretation Act, 1897.

DIVISION 2.—*The Civil Jurisdiction of the Court.*

Interpretation: Pt. VI, Div. 2.

184. In this Division—

"district" means district referred to in section 5 of the District Courts Act, 1912;

"former Court" means a District Court established under the District Courts Act, 1912, and includes a court referred to in an instrument as "the District Court" or "the district court";

"instrument" means an Act (other than this Act) enacted before the commencement of this Act, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before the commencement of this Act;

"the new Court" means the Court.

Savings as to places, sittings, Judges and officers.

185. (1) A proclamation made under section 4 (1) of the District Courts Act, 1912, and in force immediately before the commencement of this Act, shall—

(a) in so far as it specifies the towns and places at which former Courts shall be holden—be deemed to be a proclamation under section 31 (2) specifying proclaimed places; and

(b)

(b) in so far as it specifies the times at which former Courts shall be holden—shall be deemed to be a proclamation under section 32 (2) directing that the new Court shall sit in its civil jurisdiction at those times at the proclaimed places specified therein.

(2) A person appointed as a judge under section 14 of the District Courts Act, 1912, and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed as a Judge under section 13 of this Act.

(3) A person appointed to sit and act as a judge under section 19A of the District Courts Act, 1912, and whose appointment continues in force immediately before the commencement of this Act, shall be deemed to have been appointed to act as a Judge under section 18 of this Act, but he shall not, by virtue of this subsection, hold office as such for a time longer than that for which he was appointed to exercise jurisdiction under section 19A of the District Courts Act, 1912.

(4) The person who was, immediately before the commencement of this Act, the Chairman of the District Court Judges shall be deemed to have been appointed as the Chief Judge under section 13 (4).

(5) A person appointed as a judge under the District Courts Act, 1912, and not holding office as such immediately before the commencement of this Act, and the widow of any such person, shall, notwithstanding anything in this Act, have the same rights as to salary, pension or otherwise which he or she would have had if this Act had not been enacted.

(6) A person holding office immediately before the commencement of this Act as the registrar of the District Court of the Metropolitan District holden at Sydney under section 21 (2) (a) of the District Courts Act, 1912, or as an

assistant

assistant registrar of that Court under section 24 of that Act shall be deemed to have been appointed as the registrar for Sydney under section 19 (2) of this Act or as an assistant registrar for Sydney under section 22 (1) of this Act, as the case may require.

(7) A person holding office immediately before the commencement of this Act as a bailiff for a former Court appointed under section 26 (3) of the District Courts Act, 1912, or an officer appointed under section 26 (4) of that Act to assist a bailiff for a former Court, shall be deemed to have been appointed under section 25 (3) of this Act as a bailiff, or under section 26 (1) of this Act as an assistant bailiff, as the case may require, of the new Court for the proclaimed place that is the place at which the former Court was ordered, under section 4 (1) of the District Courts Act, 1912, to be holden.

Pending proceedings, etc.

186. (1) Subject to the rules, and unless the Court otherwise orders—

(a) any proceedings pending in a former Court immediately before the commencement of this Act shall be continued in and disposed of by the new Court sitting at the proclaimed place that is the place at which the former Court was holden immediately before the commencement of this Act, but otherwise those proceedings shall be continued and disposed of as if this Act had not been enacted;

(b) any judgment or order of the new Court in proceedings referred to in paragraph (a) shall be enforceable in accordance with this Act and the rules;

(c) except as provided in paragraph (d), any judgment or order of a former Court shall be enforceable in accordance with this Act and the rules by the new Court sitting at the proclaimed place at which the

former

former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act;

(d) any judgment or order of a former Court shall, as regards any step taken in the enforcement of the judgment or order before the commencement of this Act, be enforceable by the new Court sitting at the proclaimed place at which the former Court was holden in which the judgment or order could have been enforced immediately before the commencement of this Act, but otherwise shall be enforceable as if this Act had not been enacted; and

(e) the entitlement of any party to costs in respect of proceedings commenced before the commencement of this Act and completed after that commencement shall be ascertained as if this Act had not been enacted.

(2) For the purposes of continuing any proceedings in, or enforcing any judgment or order in, the new Court sitting at a proclaimed place, that place shall be deemed to be the proper place in relation to those proceedings or the proceedings in which the judgment was given or entered up or the order was made, as the case may require.

(3) Unless the Supreme Court in a particular case otherwise orders—

(a) Division 7 of Part III (section 126 excepted) applies to and in respect of proceedings in, or a judgment or order of, a former Court as if they or it were proceedings in, or a judgment or order of, the new Court; and

(b) any appeal made under Part VI of the District Courts Act, 1912, and pending in the Supreme Court immediately before the commencement of this Act shall be deemed to have been made under Division 7 of Part III of this Act.

References to District Court in existing instruments.

187. (1) In an instrument—

(a) subject to paragraphs (b) and (c), a reference to a former Court shall be read and construed as a reference to the new Court;

(b) subject to paragraph (c), a reference to a former Court within the jurisdiction of which, or within the district of which, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(c) a reference to a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) In an instrument, a reference to the Metropolitan District Court (however expressed) shall be read and construed as a reference to the new Court sitting at Sydney.

(3) Where under any instrument any power is vested in a former Court, the power shall be exercised by the new Court in all respects as it might have been exercised immediately before the commencement of this section, but in accordance with this Act and the rules.

188. (1) Subject to subsection (3), in an instrument— References to District Court judges in existing instruments.

(a) a reference to the Chairman of the District Court Judges shall be read and construed as a reference to the Chief Judge;

(b) subject to paragraphs (c) and (d), a reference to a District Court judge shall be read and construed as a reference to a Judge appointed under this Act;

(c) subject to paragraph (d), a reference to a District Court judge within whose jurisdiction, or within whose district, or of or for the district where, or having or exercising jurisdiction within the district where, a place, building, institution or any other matter or thing is situated, or an event occurred or is occurring or is expected to occur, or a person has his place of abode or resides or carries on his business, shall be read and construed as a reference to the new Court sitting at the nearest proclaimed place to the place where that place, building, institution, matter or thing is situated, or that event occurred or is occurring or is expected to occur, or that person has his place of abode or resides or carries on his business; and

(d) a reference to a District Court judge occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the new Court sitting at the proclaimed place specified in or determined in accordance with the rules.

(2) Subject to subsections (1) (c) and (d) and (3), where under an instrument a power (other than a power to make rules) is vested in the District Court judges, or in any number of them, or a majority of them, or any one of them that power shall be exercised by the new Court in all respects as those judges or that judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.

(3)

No. 52, 1970, s. 24 (7).

(3) The Governor may direct by proclamation that—

(a) subsection (1) (c) and (d) shall not apply to a reference specified in the proclamation; or

(b) subsection (2) shall not apply to any power specified in the proclamation,

and the proclamation shall have effect accordingly, but subject to subsection (5).

(4) A proclamation under subsection (3) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication of the proclamation in the Gazette.

(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation under subsection (3) has been laid before it, disallowing the proclamation or any part of it, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

References to registrars and bailiffs in existing instruments.

189. In an instrument—

(a) subject to paragraphs (b) and (c), a reference to a registrar or bailiff of a former Court shall be read and construed as a reference to a registrar or bailiff of the new Court;

(b) subject to paragraph (c), a reference to the registrar or a bailiff of a former Court shall, if the reference to that former Court is, under section 187 (1) (b) or (c), to be read and construed as a reference to the new Court sitting at a proclaimed place specified

in

in section 187 (1) (b) or specified in or determined in accordance with the rules, be read and construed as a reference to the registrar or a bailiff of the new Court for that place; and

(c) a reference to a registrar or bailiff of a former Court occurring in conjunction with or in relation to a reference to a district shall, if the rules so provide, be read and construed as a reference to the registrar or a bailiff of the new Court for the proclaimed place specified in or determined in accordance with the rules.

References to writs, etc., in existing instruments.

190. (1) In an instrument—

(a) a reference to a writ of fieri facias issued out of a former Court shall be read and construed as a reference to a writ of execution issued out of the new Court; and

(b) a reference to a writ of capias ad satisfaciendum issued out of a former Court shall be read and construed as a reference to a writ against the person issued out of the new Court.

(2) In an instrument, a reference to an action of or proceedings in ejectment in a former Court includes a reference to proceedings for possession of land under Division 8 of Part III.

Provisions as to practice and procedure in existing instruments.

191. The provisions of an instrument shall, in so far as they have effect in respect of or in relation to the practice and procedure of the new Court or any documents that may be or are issued by or in respect of the new Court, have effect subject to the rules.

DIVISION

DIVISION 3.—*The Criminal and Special Jurisdiction of the Court.*

Interpretation: Pt. VI, Div. 3.

192. In this Division—

"appointed place" has the meaning ascribed to it by section 165;

"former Court" means a Court of Quarter Sessions;

"the new Court" means the Court.

Savings as to places and sittings.

193. A proclamation made under section 569 of the Crimes Act 1900 appointing the times and places at which former Courts shall be held, and in force immediately before the commencement of this Act, shall—

(a) in so far as it specifies the places at which former Courts shall be held—be deemed to be a proclamation under section 172 (2) specifying appointed places; and

(b) in so far as it specifies the times at which former Courts shall be held—be deemed to be a proclamation under section 173 directing that the new Court shall sit in its criminal and special jurisdiction at those times at the appointed places specified therein.

Pending proceedings.

194. Notwithstanding anything in Part IV or Division 1, where any proceedings were pending in a former Court immediately before the commencement of this Act—

(a) that former Court shall continue in existence for the purpose only of the hearing and disposing of those proceedings; and

(b) those proceedings shall be heard and disposed of in all respects as if this Act had not been enacted.

SCHEDULE

SCHEDULE 1.

Sec. 180.

REPEALS.

Year and number of Act.	Short title of Act.
1901, No. 48 ..	Inter-state Debts Recovery Act, 1901.
1912, No. 23 ..	District Courts Act, 1912.
1920, No. 9 ..	Quarter Sessions Enabling Act, 1920.
1924, No. 30 ..	District Courts (Judges Pensions) Act, 1924.
1928, No. 7 ..	Supreme Court and District Courts (Judges) Act, 1928.
1932, No. 34 ..	District Courts (Validation and Amendment) Act, 1932.
1932, No. 35 ..	District Courts (Further Validation and Amendment) Act, 1932.
1936, No. 4 ..	District Courts (Amendment) Act, 1936.
1940, No. 44 ..	Attachment of Wages Limitation Act, 1940.
1949, No. 44 ..	District Courts (Amendment) Act, 1949.
1951, No. 19 ..	District Courts (Amendment) Act, 1951.
1955, No. 20 ..	District Courts (Amendment) Act, 1955.
1958, No. 11 ..	District Courts (Amendment) Act, 1958.
1961, No. 18 ..	District Courts and Small Debts Recovery (Amendment) Act, 1961.

Sec. 181.

SCHEDULE 2.

AMENDMENT OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
60 Vic. No. 23	Municipal Council of Sydney Electric Lighting Act 1896–1928	Section 1— Omit "1896–1928", insert instead ", 1896". Section 38— Omit "; and in every such proceeding the defendant may, except in the Supreme Court, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon".
1898, No. 11..	Evidence Act, 1898	Section 43B— Omit the section.
1899, No. 18..	Landlord and Tenant Act, 1899	Section 1— Omit the matter relating to Part III. Section 2A (1)— Omit "or proceedings under section seventeen of this Act". Part III— Omit the Part.
1899, No. 20..	Police Regulation Act, 1899	Section 26 (1)— Omit "and may, except in the Supreme Court, plead the general issue,".
1899, No. 24..	Stage-carriages Act, 1899	Section 14— Omit the section, insert instead the following section:— Commencement of action. 14. An action against any person for anything done in pursuance of this Act shall be commenced within three months after the act is committed and not afterwards.
1900, No. 25..	Real Property Act, 1900	Section 105 (1)— (a) Omit "the registrar or bailiff of any", insert instead "a bailiff of the"; (b) Omit "or District Court". Section 105 (2)— Omit "the registrar or bailiff of any", insert instead ", subject to section 110 (6) of the District Court Act, 1973, a registrar of the".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1900, No. 40..	Crimes Act 1900	Section 563 (1)— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue, and give the special matter in evidence thereupon". Section 563 (3)— Omit the subsection. Sections 568–571 (inclusive)— Omit the sections.
1901, No. 5 ..	Police Offences Act, 1901	Section 114 (3) and (5)— Omit the subsections.
1901, No. 8 ..	Judgment Creditors' Remedies Act, 1901	Section 13 (2)— Omit "or to the sheriff of any district". Section 17 (1)— Omit "warrant or". Section 24— Omit the section.
1901, No. 9 ..	Anatomy Act, 1901	Section 20 (2)— Omit the subsection.
1901, No. 28..	Hawkers and Pedlers Act, 1901	Section 26— (a) Omit "and in such action the defendant, except in the Supreme Court, may plead the general issue and at the trial give this Act and the special matter in evidence,"; (b) Omit ", and if any such action is in a District Court and judgment is given against the plaintiff or the plaintiff is nonsuited or discontinues such action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has in other cases".

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1901, No. 33..	Inclosed Lands Protection Act, 1901	Section 9— Omit ", and in any such action other than an action in the Supreme Court the defendant may plead the general issue and give this Act and the special matter in evidence at the trial of such action".
1901, No. 45..	Married Women's Property Act, 1901	Section 1— Omit "Women's Property", insert instead "Persons (Property and Torts)". Section 22 (1)— Omit "within whose jurisdiction", insert instead "sitting at the proclaimed place nearest to the place where". Section 22 (3)— Omit the subsection, insert instead the following subsection:— (3) Section 128 of the District Court Act, 1973, applies to and in respect of any such application to the District Court as if the application were an action within the meaning of that Act.
1902, No. 27..	Justices Act, 1902	Section 142— Omit the section. Section 145— Omit the section.
1902, No. 66..	Pawnbrokers Act, 1902	Section 46— Omit the section.
1908, No. 31..	Pure Food Act, 1908	Section 20— Omit "Division 7 of Part III of the District Courts Act, 1912–1936, shall apply, mutatis mutandis, to any such appeal.".
1912, No. 30..	Government Railways Act, 1912	Section 144 (4)— Omit the subsection.
1912, No. 31..	Jury Act, 1912	Section 3— Omit "any district court", insert instead "the District Court". Section 5 (a)— Omit "district courts, chairmen of courts of quarter sessions", insert instead "the District Court".

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 8— Omit "or any court of quarter sessions or district court". Section 15 (1)— Omit "a district court or a court of quarter sessions", insert instead "the District Court". Section 15 (2)— Omit "district court, or in any court of quarter sessions", insert instead "the District Court". Section 22— Omit ", or a district court, or court of quarter sessions", insert instead "or the District Court". Section 27 (1)— Omit "courts of quarter sessions", insert instead "the District Court". Section 29— Insert at the end of the section the following new subsection:— (2) Subject to the provisions of this Act and of any other Act in force for the time being, where proceedings in the District Court in its civil jurisdiction are to be tried with a jury, all issues of fact in the proceedings shall be tried, and all damages and sums of money recoverable in those proceedings shall be assessed, before a Judge of that Court, by a jury consisting of four persons duly qualified according to law as jurors, and returned and chosen as hereinafter mentioned. Section 30— Omit "said court" wherever occurring, insert instead "Supreme Court". Section 30A— After "civil trial" insert "in the Supreme Court or the District Court". Section 32 (1)— Omit "courts of quarter sessions", insert instead "District Court". Section 32 (2A)— After section 32 (2) insert the following new subsection:— (2A) Every such precept returnable in the District Court in its civil juris-

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	Section 32 (2A)—*continued.* diction shall be under the hand of the registrar for the proclaimed place at which it is returnable. Section 32 (3)— (a) Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction"; (b) Omit "a chairman of a court of quarter sessions", insert instead "a Judge of the District Court". Section 36 (2)— Omit "a court of quarter sessions", insert instead "the District Court in its criminal and special jurisdiction". Section 36 (3)— After section 36 (2) insert the following new subsection:— (3) No such precept returnable in the District Court in its civil jurisdiction shall require the sheriff to summon at any one time more than forty-eight or less than twelve jurors. Section 37— Omit ", or a district court, or a court of quarter sessions", insert instead "or the District Court". Section 45 (1)— Omit "a sitting of a court of quarter sessions", insert instead "the District Court". Section 57 (1)— Omit " a court of quarter sessions", insert instead "the District Court". Section 70— Omit "courts of quarter sessions", insert instead "the District Court". Section 72— Omit the section. Section 86— (a) Omit from paragraph (b) "a court of quarter sessions or by a chairman thereof", insert instead "the District Court in its criminal and special jurisdiction or by a Judge of the District Court exercising that jurisdiction";

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1912, No. 31—*continued*	Jury Act, 1912—*continued*	(b) After paragraph (b) insert the following new paragraph:— (c) all fines imposed under this Act by the District Court in its civil jurisdiction shall be levied and recovered in accordance with the rules of the District Court.
1912, No. 73..	Irrigation Act, 1912	Section 17c (4)— Omit the subsection.
1913, No. 7 ..	Crown Lands Consolidation Act, 1913	Section 249— Omit "And in every such proceeding, other than a proceeding in the Supreme Court, the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon.".
1919, No. 41..	Local Government Act, 1919	Section 580 (8)— Omit the subsection.
1924, No. 42..	Administration of Justice Act, 1924	Section 2— (a) Omit "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901—*ss.* 8, 9."; (b) Omit "DIVISION 2.—*District Courts Act*, 1912—*s.* 10.". Part III— Omit the heading "DIVISION 1.—*Inter-state Debts Recovery Act*, 1901.". Section 8— Omit the section. Section 9— Omit the section. Part III— Omit the heading "DIVISION 2.—*The District Courts Act*, 1912.". Section 10— Omit the section.
1930, No. 18..	Transport Act, 1930	Section 168 (4)— (a) After "recovered" insert "in the District Court"; (b) Omit "district court in such district court as the Transport Appeal Court directs", insert instead "District Court". Section 233 (4)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1932, No. 3 ..	Ministry of Transport Act, 1932	Section 17 (4)— Omit the subsection.
1932, No. 31..	Transport (Division of Functions) Act, 1932	Section 28 (4)— Omit the subsection.
1935, No. 47..	Maritime Services Act, 1935	Section 40 (5)— Omit the subsection.
1937, No. 35..	Statute Law Revision Act, 1937	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1939, No. 29..	Drainage Act, 1939	Section 71 (1)— After "debt" insert "or liquidated demand". Section 71 (2)— Omit the subsection.
1947, No. 41..	Jury (Amendment) Act, 1947	Section 6 (1) and (3)— Omit the subsections.
1950, No. 22..	Electricity Commission Act, 1950	Section 100 (7)— Omit the subsection.
1951, No. 11..	Sydney Harbour Transport Act, 1951	Section 34 (7)— Omit the subsection.
1951, No. 43..	Matrimonial Causes (Amendment) Act, 1951	Section 1 (3)— Omit the subsection. Section 2 (1)— Omit the subsection.
1953, No. 41..	Judges' Pensions Act, 1953	Section 2— From the definition of "Judge" omit "Chairman of the District Court Judges, District Court judge", insert instead "Chief Judge or Judge of the District Court".

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1953, No. 41—*continued*	Judges' Pensions Act, 1953—*continued*	Section 2B— After section 2A insert the following new section:— Continuity of judicial office in the District Court. 2B. The office of Chairman of the District Court Judges and of District Court judge under the District Courts Act, 1912, shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, under the District Court Act, 1973. Section 8 (3)— Omit "or an acting judge of any District Court", insert instead "an acting judge of a District Court (under the District Courts Act, 1912), or an acting Judge of the District Court (under the District Court Act, 1973)". Section 13 (2)— Omit the subsection.
1954, No. 36..	Grain Elevators Act, 1954	Section 56 (7)— Omit the subsection.
1957, No. 28..	Attachment of Wages Limitation Act, 1957	Section 3— Omit the section.
1961, No. 29..	Industrial Arbitration (Basic Wage) Amendment Act, 1961	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1963, No. 59..	State Planning Authority Act, 1963	Section 70 (7)— Omit the subsection.
1964, No. 37..	Industrial Arbitration (Amendment) Act, 1964	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 12..	Supreme Court and Circuit Courts (Amendment) Act, 1965	Section 8— Omit the section. Schedule— Omit so much as relates to the District Courts Act, 1912.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1965, No. 32..	Law Reform (Miscellaneous Provisions) Act, 1965	Section 3— Omit so much as relates to Parts II, VII, VIII. Part II— Omit the Part. Section 13— Omit the section. Section 14— Omit the section. Part VII— Omit the Part. Part VIII— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1965, No. 33..	Decimal Currency Act, 1965	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1967, No. 35..	National Parks and Wildlife Act, 1967	Section 45 (1)— After "debt" insert "or liquidated demand". Section 45 (2)— Omit the subsection.
1967, No. 86..	Industrial Arbitration (Basic Wage) Amendment Act, 1967	First Schedule; Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 3 ..	Administration of Justice Act, 1968	Section 3— Omit so much as relates to Part IX. Part IX— Omit the Part. Schedule— Omit so much as relates to the District Courts Act, 1912.
1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968	Section 44 (7)— Omit the subsection.
1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968	Section 53 (9)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 11..	Courts of Petty Sessions (Civil Claims) Act, 1970	Section 12 (2)— Omit "a District Court having jurisdiction in the matter under section seven of the District Courts Act, 1912", insert instead "the District Court sitting at the nearest proclaimed place to the place— (a) where the defendant, or any one of two or more defendants, is resident or carries on his business; or (b) where the cause of action arose". Section 12 (3)— Omit "District Court to which the action is ordered to be transferred", insert instead "registrar of the District Court for the proclaimed place mentioned in the order". Section 12 (4)— (a) Omit "a District Court", insert instead "the District Court"; (b) Omit "District Courts Act, 1912", insert instead "District Court Act, 1973"; (c) Omit "that District Court", insert instead "the District Court". Section 12 (5)— Omit "a District Court", insert instead "the District Court".
1970, No. 29..	Dairy Industry Authority Act, 1970	Section 81 (9)— Omit the subsection.
1970, No. 52..	Supreme Court Act, 1970	Second Schedule— Omit so much as relates to the District Courts Act, 1912.
1970, No. 60..	Minors (Property and Contracts) Act, 1970	First Schedule— Omit so much as relates to the District Courts Act, 1912.
1970 No. 95..	State Pollution Control Commission Act, 1970	Section 30 (9)— Omit the subsection.

SCHEDULE

District Court.

SCHEDULE 2—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1970, No. 96..	Summary Offences Act, 1970	Section 65 (5)— Omit the subsection.
1970, No. 97..	Waste Disposal Act, 1970	Section 54 (9)— Omit the subsection.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 10th April, 1973.