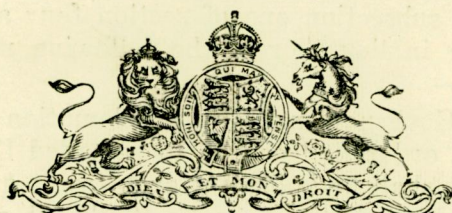


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

H. ROBBINS,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 1 November, 1949.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. , 1949.

An Act to make further provision as to the jurisdiction of District Courts; to confer an equitable jurisdiction upon such courts; for these and other purposes to amend the District Courts Act, 1912-1947, and the Matrimonial Causes Act 1899, and certain other Acts in certain respects; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1949."

10445 440—A

Short title,
citation and
commence-
ment.

(2)

District Courts (Amendment).

(2) The District Courts Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may be cited as the District Courts Act, 1912-1949.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

- 10 (a) by omitting subsection one of section four and by inserting in lieu thereof the following new subsection:—
- Amendment of Act No. 23, 1912.
Sec. 4.
(Appointment of District Courts.)
- 15 (1) The Governor may, by proclamation in the Gazette, order that courts, to be called District Courts, shall be holden at such towns and places and at such times as he thinks fit and may, in like manner, alter the place or time for holding any such court, or order that the holding of any such court be discontinued.
- 20 (b) by omitting subsection two of section five and by inserting in lieu thereof the following subsection:—
- Sec. 5.
(Creation of district.)
- 25 (2) Any such proclamation shall take effect from the date of notification thereof in the Gazette or from such later date as may be specified therein.
- 30 (c) (i) by omitting from subsection two of section seven the words "at present";
- Sec. 7.
(Jurisdiction: claims under £10.)
- (ii) by omitting from the same subsection the words "so long as such jurisdiction as last aforesaid continues";
- (d) by omitting section ten and by inserting in lieu thereof the following section:—
- Substituted sec. 10.
Change of venue.
- 35 10. (1) In any action or matter pending in any District Court—
- (a) if it appears that a fair or unprejudiced trial of any issue cannot otherwise be had; or

(b)

District Courts (Amendment).

(b) if for any other reason it appears expedient to the judge so to do, the judge may change the venue and direct the trial or hearing to be had in some other District Court, and may for that purpose make all such orders, and (where the venue is changed at the instance of any party) impose such terms and conditions, as justice appears to require.

(2) Where the venue is changed the registrar of the District Court in which the action or matter was commenced shall forthwith transmit by post the whole record thereof to the registrar of the District Court to which the action or matter is to be sent.

(3) The judge and registrar of such last-mentioned District Court shall have the same jurisdiction and powers in respect of such action or matter as if it had been commenced in that District Court, and all further proceedings in the action or matter shall be had as if it had been so commenced.

(4) Where the venue of an action or matter is changed to another District Court, the judge of that District Court shall appoint a day for the hearing, notice whereof shall be sent by the registrar by post or otherwise to the parties.

(e) by inserting at the end of subsection one of section fourteen the words "Such judge as the Governor determines shall be Chairman of the District Court Judges";

Sec. 14.
(Appoint-
ment and
qualification
of judges.)

(f) by omitting section fifteen and by inserting in lieu thereof the following section:—

Substituted
sec. 15.

15. Each District Court judge is constituted a judge of every District Court and chairman of every court of quarter sessions in New South Wales, and each such judge or chairman, as the case may be, shall exercise jurisdiction in such district or districts as the Minister shall from time

Judges
appointed
for New
South
Wales.

District Courts (Amendment).

time to time appoint in respect of such judge or chairman.

- (g) by omitting subsection two of section sixteen and by inserting in lieu thereof the following subsections:—

Sec. 16.
(Two or more judges appointed in same district.)

(2) Where two or more District Court judges are appointed to exercise jurisdiction in one and the same district, only one of such judges shall sit, preside or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers and in the discharge of other administrative duties imposed by this Act upon the judge of any District Court, the concurrence of such number of judges as may be prescribed in respect of that district shall be required.

(2A) Subject to the provisions of this Act, sittings of the District Courts shall be arranged by the Chairman of the District Court judges.

- (h) by omitting sections twenty-one, twenty-two and twenty-three and by inserting in lieu thereof the following section:—

Secs. 21-23.
(Registrars.)

21. (1) There shall be a registrar for every District Court.

Registrars.

(2) (a) In the case of the District Court of the Metropolitan District holden at Sydney the registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed registrar of such court under the provisions of this paragraph.

(b) In every other case the registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(i)

District Courts (Amendment).

- (i) by omitting from section twenty-four the words Sec. 24.—
 “The Governor may appoint an assistant (Assistant
 registrar to act at any place” and by inserting registrar.)
 in lieu thereof the following paragraphs:—

5 The Governor may, from time to time, appoint
 places at which the powers and duties herein-
 after mentioned may be exercised by an assistant
 registrar. The places at which an assistant
 10 registrar acted immediately before the com-
 mencement of the District Courts (Amendment)
 Act, 1949, shall be deemed to be places appointed
 by the Governor pursuant to the foregoing
 provisions of this section.

15 In the case of the District Court of the
 Metropolitan District holden at Sydney the
 assistant registrar shall be appointed by the
 Governor. The person who at the commence-
 ment of the District Courts (Amendment) Act,
 1949, held office as assistant registrar of the
 20 District Court of the Metropolitan District
 holden at Sydney shall be deemed to have been
 appointed assistant registrar of such court
 under the provisions of this section.

25 In every other case at each place appointed
 by the Governor pursuant to the provisions of
 this section the assistant registrar shall be the
 person for the time being holding office as, or
 discharging the functions of, clerk of petty
 sessions at such place.

- 30 (j) (i) by omitting from subsection one of section Sec. 30.
 thirty the words “or partner of such (Disabilities
 registrar”; of registrar
 and bailiff.)

(ii) by omitting from the same subsection the
 words “or partner” wherever occurring;

- 35 (iii) by omitting from the same subsection the
 words “by himself or his partner”;

- (k) by omitting section thirty-one;

Sec. 31.
 (Registrar and
 bailiff to give
 security.)

(1)

District Courts (Amendment).

- (1) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division:—

Division 4.
(Time and
place for
holding
court.)

DIVISION 4.—*Adjournment of court.*

- 5 32. Where for any reason it is not practicable for a sitting of a District Court to take place on the date appointed therefor, the registrar, or in the event of his death or absence the bailiff, shall adjourn the court to such hour or such later date as he may deem convenient.

Adjourn-
ment of
court.

- 10 (m) by omitting section thirty-five;

Sec. 35.
(Court fees
to be denoted
by stamps.)
New sec.
52A.

- (n) by inserting next after section fifty-two the following new section:—

- 15 52A. Actions or matters pending or arising in any District Court between the same parties may be consolidated by order of a judge, upon such terms as he thinks just and reasonable.

Consolida-
tion of
trials.

- 20 (o) (i) by omitting from section sixty-seven the words “seven days” and by inserting in lieu thereof the words “the prescribed number of days”;

Sec. 67.
(Judgment
in default of
defence.)

- (ii) by omitting from the same section the words “ten days” and by inserting in lieu thereof the words “the prescribed number of days”;

- 25 (iii) by inserting at the end of the same section the words “For the purposes of this section rules of court may prescribe numbers of days varying according to whether the defendant is served within or outside the district for which such court is constituted and in the latter case varying according to the distance of the place where the defendant is served from such court”;

- 30 (p) by omitting from section sixty-eight the words “mentioned in the last preceding section” and by inserting in lieu thereof the words “prescribed pursuant to section sixty-seven of this Act”;

Sec. 68.
(Defence
lodged after
time.)

(q)

District Courts (Amendment).

- (q) (i) by omitting from section seventy-three the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- 5 (ii) by inserting at the end of the same section the following new proviso:—
- Provided further that where the matter the subject of such set-off or cross action involves an amount in excess of one
- 10 thousand pounds, the defendant may abandon the excess, which abandonment shall be notified to the plaintiff in the manner prescribed, and may pursue the matter the subject of such set-off or cross
- 15 action to an amount not exceeding one thousand pounds.
- (r) (i) by inserting next after paragraph (d) of subsection one of section seventy-five the following new paragraph:—
- 20 (e) be allowed to raise such other defence or defences as may be prescribed by rules of court;
- (ii) (a) by omitting from subsection two of the same section the word "hereafter";
- 25 (b) by omitting from the same subsection the words "at present";
- (s) by omitting from section ninety-one the words "two pounds" and by inserting in lieu thereof the words "four pounds";
- 30 (t) by omitting subsections one and two of section one hundred and by inserting in lieu thereof the following subsection:—
- (1) Where any judgment for a plaintiff or defendant has been given or entered up in a District Court the judge may at any time order the same to be paid at such time or times and by such instalments, if any, as he thinks fit.
- 35 (u)

Sec. 73.
(Proceedings where defendant's set-off or cross action exceeds the plaintiff's claim.)

Sec. 75.
(Notice of equitable and special defence.)

Sec 91.
(Party requiring jury to make deposit.)

Sec. 100.
(Judgment payable by instalments.)

District Courts (Amendment).

- (u) by omitting section one hundred and one and by inserting in lieu thereof the following section:—

Substituted
sec. 101.

5

101. Where in any action in a District Court for a debt or liquidated demand, judgment by default or confession is entered up against one or more of several defendants, the plaintiff may enforce such judgment without prejudice to his right to proceed against, and to enforce any judgment obtained against, any other defendant or defendants, except in so far as satisfaction by any defendant operates in favour of all.

Judgment
against
some only
of
defendants.

10

- (v) by inserting next after section one hundred and three the following new section:—

New sec.
103A.

15

103A. (1) Any judgment debtor in a District Court (in this section referred to as "the first court") who has obtained judgment against his judgment creditor in some other District Court (in this section referred to as "the second court") may make application to the judge of the first court for an order that the judgment against him be set off against the judgment in his favour.

Set-off of
judgments.

20

(2) Where any such order has been made, and—

25

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

30

- (b) the amount of the judgment in the first court is greater than the amount of the judgment in the second court, the amount of the judgment in the first court shall be reduced by the amount of

35

District Courts (Amendment).

of the judgment in the second court, and the judgment in the second court shall be deemed to be satisfied.

- 5 (w) by inserting in section one hundred and four after the word "may" the words "except where otherwise directed by the judge"; Sec. 104.
(Judgment payable by instalments.)
- (x) by omitting from section one hundred and five the words "six years" and by inserting in lieu thereof the words "twenty years"; Sec. 105.
(Execution in twenty years without revival.)
- 10 (y) (i) by omitting from subsection one of section one hundred and ten the words "by the said registrar, by himself or his deputy" and by inserting in lieu thereof the words "pursuant to this Act"; Sec. 110.
(Registrar to execute deed of sale.)
- 15 (ii) by omitting from the same subsection the word "said" where secondly occurring;
- (iii) by omitting from the same section the words "bargain and sale" wherever occurring and by inserting in lieu thereof the word
- 20 "assurance";
- (z) by omitting the proviso to section one hundred and twelve and by inserting in lieu thereof the following proviso:— Sec. 112.
(Bailiff to seize personal property.)
- Provided that—
- 25 (a) wearing apparel;
- (b) bedding;
- (c) tools; and
- (d) implements of trade;
- 30 of the said person and his family, to the value of ten pounds in respect of each such class of goods shall be protected from seizure.
- (aa)

District Courts (Amendment).

(aa) by omitting section one hundred and thirteen;

Sec. 113.
(When goods
seized under
process of
District
Courts
landlord may
claim cer-
tain rent in
arrears.)

5 (bb) (i) by inserting in subsection one of section one hundred and sixteen after the word "registrar" where secondly occurring the words "or the judge or registrar of the court of the district in which the judgment debtor resides";

Sec. 116.
(Examination
of debtor,
when judg-
ment, etc.,
for recovery
of money.)

(ii) by omitting subsection three of the same section;

10 (cc) by inserting next after section one hundred and twenty the following new section:—

New sec.
120A.

15 120A. (1) Whenever in any proceedings in a District Court to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt.

Lien or
claim of
third person
on debt.

20 (2) After hearing the allegations of any third person under any such order as mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the judge to appear, or in case of
25 such third person not appearing when ordered, the judge may order execution to issue as provided in section one hundred and nineteen of this Act, or may order any issue or question arising to be tried or determined, and may bar
30 the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reason-
35 able.

(dd)

District Courts (Amendment).

(dd) by inserting next after section one hundred and twenty-five the following new section:—

New sec.
125A.

125A. For the purposes of this Division of this Part of this Act "judgment" includes any order for the payment of a sum of money whether as costs or otherwise.

Definition
of "judg-
ment."

(ee) (i) by omitting from section one under the matter relating to Part II the words and figures "Division 4.—Time and place for holding court—s. 32" and by inserting in lieu thereof the following words and figures "Division 4.—Adjournment of court—s. 32";

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

(ii) by omitting from the same section the symbols "125" and by inserting in lieu thereof the symbols "125A";

3. The Principal Act is further amended—

Further
amendment
of Act No.
23, 1912.

(a) (i) by omitting from subsection one of section forty-one the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 41.
(Ordinary
jurisdiction
of the
courts.)

(ii) by omitting subsection two of the same section;

(b) by omitting from section forty-two the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 42.
(Jurisdiction
in cases of
partnership,
intestacy
and legacy.)

(c) by omitting from section fifty-five the words "four hundred pounds" wherever occurring and by inserting in lieu thereof the words "one thousand pounds";

Sec. 55.
(Splitting
debt by
giving
bills, etc.)

(d) by omitting from section fifty-seven the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 57.
(Infants.)

(e)

District Courts (Amendment).

(e) by omitting section fifty-eight.

4. The Principal Act is further amended—

(a) by inserting next after section one hundred and thirty-one the following new Part:—

Sec. 58.
(Actions by
physicians,
etc.)
Further
amendment
of Act No. 23,
1912.
New
Part IIIA.

5

PART IIIA.

JURISDICTION IN EQUITY.

131A. (1) A District Court shall have and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say—

Jurisdic-
tion in
equity.
cf. 24 and
25, Geo. V,
c. 53, ss.
52, etc.

10

(a) for foreclosure or redemption of any mortgage or for enforcing any charge or lien where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds;

15

(b) for specific performance of or for the rectification, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds;

20

(c) applications for an order under section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, where the amount claimed does not exceed the sum of five hundred pounds;

25

(d) actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds;

30

35

(e)

District Courts (Amendment).

5 (e) for the execution of any trust or for a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the sum of five hundred pounds;

10 (f) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the sum of five hundred pounds.

15 (2) In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of the Chief Judge in Equity, and the registrar and bailiff respectively shall in all such actions or matters discharge any duties which an officer of the Supreme Court can discharge, either under the order of the said Chief Judge in Equity or under the practice of the Supreme Court in Equity, and all officers of the District Courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

25 (3) If during the progress of any action or matter under subsection one of this section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct the action or matter to be transferred to the Supreme Court in its equitable jurisdiction, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts:

40 Provided always, that it shall be lawful for any party to apply to the Chief Judge in Equity at chambers for an order authorising and directing the action or matter to be carried on and

District Courts (Amendment).

and prosecuted in the District Court, notwithstanding such excess in the amount or value of the limit to which equitable jurisdiction is given by subsection one of this section; and the Chief Judge in Equity, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

(4) Where any action or matter is pending in the Supreme Court in its equitable jurisdiction which might have been commenced in a District Court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the Chief Judge in Equity to have the same transferred to the District Court in which the same might have been commenced, and the Chief Judge in Equity shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the District Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such District Court.

(5) If during the progress of any action or matter under subsection one of this section (not being an action or matter transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be transferred to the Supreme Court in its equitable jurisdiction, then without prejudice to the validity of any order already made the judge may direct the action or matter to be transferred accordingly, and the whole of the procedure in the said action or matter when so transferred

District Courts (Amendment).

transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts.

- 5 (b) by inserting next after subsection one of section seven the following new subsection:—

Sec. 7.
(Jurisdiction: in equity.)

(1A) Notwithstanding the provisions of subsection one of this section—

- 10 (a) proceedings which relate to the foreclosure, redemption, recovery or sale of any mortgage, charge, or lien on any lands, tenements, or hereditaments, shall be taken in the court for the district within which the lands, tenements, or hereditaments, or any part thereof, are situated;

- 15 (b) proceedings under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, pursuant to paragraph (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:

30 Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other District Court it shall be competent for the court to transfer the same to such other court, and thereupon the proceedings shall be taken in such other court and the provisions of section ten of this Act shall, mutatis mutandis, apply thereto.

35

(c)

District Courts (Amendment).

- (c) by inserting after paragraph (d) of section one hundred and forty-two the following word and new paragraph—

Sec. 142.
(Appeal.)

“or

- 5 (e) in any action or matter taken pursuant to Part IIIA of this Act in which the amount in issue exceeds ten pounds”;

- (d) by inserting in section one after the matter relating to Part III the following new matter:—

Sec. 1.
(Division into Parts.)
(Consequential.)

10 PART IIIA.—JURISDICTION IN EQUITY—s. 131A.

5. The Principal Act is further amended:—

- (a) by omitting section one hundred and forty;

Further amendment of Act No. 23, 1912.
Sec. 140.
(Actions of tort in Supreme Court may be remitted to District Court.)

- 15 (b) by omitting from section one hundred and forty-one the words “under either of the two last preceding sections” and by inserting in lieu thereof the words “under section one hundred and thirty-nine of this Act”;

Sec. 141.
(When action remitted to District Court plaintiff to lodge original writ.)
(Consequential.)

- 20 (c) by omitting section one hundred and forty-five and by inserting in lieu thereof the following section:—

Substituted sec. 145.

145. (1) Except as provided in this section an appeal shall not operate as a stay of proceedings.

When appeal to operate as stay of proceedings, security for costs and power of Supreme Court on appeal.

- 25 (2) (a) A judge of the District Court, on application made within the prescribed time, may order that proceedings shall be stayed during the period within which an appeal may be brought.

(b)

District Courts (Amendment).

(b) If, within such period, an appeal is brought and—

5

(i) when such order is made on the application of the plaintiff, security is given to the satisfaction of the registrar of the District Court for such amount in respect of the defendant's costs of the action as may be assessed by the registrar; or

10

(ii) when such order is made on the application of the defendant, security is given to the satisfaction of the registrar of the District Court for the amount of the verdict and such amount in respect of the plaintiff's costs of the action as may be assessed by the registrar;

15

such stay shall continue until the appeal is disposed of or until a judge of the District Court otherwise orders.

20

(3) In any appeal the Supreme Court may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party, and make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

25

(d) by omitting from section one hundred and forty-eight the words "six years" wherever appearing, and by inserting in lieu thereof the words "one year";

30

(e) by omitting section one hundred and forty-nine and by inserting in lieu thereof the following sections:—

35

149. (1) In any case not expressly provided for by this Act or by rules of court made thereunder, the practice and procedure for the time being of the Supreme Court shall be adopted as far as practicable.

Sec. 148.
(Unclaimed
moneys.)

Substituted
sec. 149, and
new secs.
150-152.

Procedure
of District
Court in
certain
cases.

District Courts (Amendment).

(2) Nothing in this section shall affect the powers of a judge of the District Court under section nineteen of the Administration of Justice Act, 1924, as amended by subsequent Acts.

150. Where by or under any Act or Commonwealth Act a right of appeal to a District Court is conferred, then, unless the contrary intention appears, such appeal shall be heard and disposed of by a judge sitting without a jury.

Appeals under any Act to District Court.

151. The District Court judges shall—

(a) assemble once at least every six months for the purpose of considering the operation of this Act and the rules of court for the time being in force, and also the working of the several District Court offices, and the arrangements relative to the duties of the officers of the District Courts, and of enquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said courts, and

Judges to meet regularly and make recommendations. cf. 1935, No. 2253 (S.A.), s. 16.

(b) report, once at least every six months, to the Attorney-General what (if any) amendments it would, in their judgment, be expedient to make in this Act, or in the rules of court, or otherwise relating to the administration of justice in District Courts, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice in District Courts.

152. (1) The District Court judges or a majority of them shall have power, by rules of court, not inconsistent with this Act, to prescribe all

Rules of court.

District Courts (Amendment).

all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and to revoke, amend or vary any such rules of court.

(2) Without limiting the generality of the foregoing power rules of court may be made with regard to District Courts for and in respect of—

- 10 (a) the practice of the courts and the forms of proceedings therein;
- (b) the scales of fees and costs to be paid to barristers and attorneys;
- (c) the expenses to be paid to witnesses;
- 15 (d) the court fees payable in any proceedings under this Act relating to the examination of judgment debtors or the attachment of debts;
- (e) the keeping of all books, entries, and accounts required to be kept by the registrars and bailiffs;
- 20 (f) the alteration of the number of days by or under this Act limited for any purpose and the substitution of other days therefor;
- 25 (g) the regulation of the manner in which applications or appeals to a court or judge under any statute may be made, and the practice and procedure to be observed upon any such application or
- 30 appeal.

(3) All rules of court so made shall—

- (a) after approval by the Attorney-General, be published in the Gazette;
- 35 (b) take effect from the date of publication or from a later date to be specified in such rules; and

(c).

District Courts (Amendment).

5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

15 (4) Non-compliance with any of the rules of court shall not render any proceeding void unless a judge so directs, but any such proceeding may be set aside, either wholly or in part as irregular, or amended or otherwise
20 dealt with in such manner and upon such terms (if any) as appear to the judge to be just.

25 (5) The general rules made under this Act and in force at the commencement of the District Courts (Amendment) Act, 1949, shall continue in force and have the same force and effect as if the same were rules of court made under this section.

30 (f) by omitting from section three the words "general rules" and by inserting in lieu thereof the words "rules of court"; Sec. 3.
(Consequential.)

(g) by omitting from section sixty-four the words "by general rules made under this Act"; Sec. 64.
(Consequential.)

35 (h) by omitting from section one the symbols "149" and by inserting in lieu thereof the symbols "152." Sec. 1.
(Division into Parts.)
(Consequential.)

District Courts (Amendment).

6. (1) The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new section:—

Further amendment of Act No. 23, 1912. New sec. 133A.

5 133A. (1) The questions of fact arising in any suit under the Matrimonial Causes Act 1899, as amended by subsequent Acts, where—

Questions of fact in undefended matrimonial cases triable in certain cases in District Courts.

(a) no appearance has been entered; and

10 (b) the registered office of the solicitor for the petitioner is situated outside the County of Cumberland,

shall, unless cause to the contrary be shown, be reduced into writing and remitted by the Supreme Court to be tried by a judge of a District Court without a jury.

15 (2) The powers of the Supreme Court under this section shall be exercised by the registrar of the matrimonial causes jurisdiction or other officer of the said court settling the issues, in private chambers, without any motion being filed or moved.

20 (3) At the time of settling the issues, such registrar or other officer shall endorse thereon the District Court at which the trial is to be had, the date of sitting of such court, the fact that the trial is to be without a jury, and such other matter as may
25 to him appear proper for fixing the time, place and mode of trial, and the return of the findings.

(4) The endorsement so made shall have the like effect as an order of the Supreme Court.

30 (5) The judge of the District Court presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

(6) The provisions of this section shall not apply to any suit—

35 (a) for restitution of conjugal rights;

(b) in which damages are claimed;

(c)

District Courts (Amendment).

- (c) in which it appears on the record that the petitioner has committed adultery; or
 (d) in which jurisdiction is derived from the Matrimonial Causes Act 1945 of the Parliament of the Commonwealth of Australia.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after section ninety-three the following new section:—

Amendment of Act No. 14, 1899. New sec. 93A.

- 93A. Where questions of fact in any suit have been remitted for trial pursuant to section 133A of the District Courts Act, 1912-1949, the power, authority and jurisdiction of the Supreme Court to pronounce a decree in, or to dismiss, such suit, and all powers, authorities and jurisdiction incidental thereto (including matters relating to costs, custody and access) shall be exercisable by the registrar or any deputy registrar.

Decrees in certain cases to be pronounced by registrar.

(3) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1949.

No. , 1949.

A BILL

To make further provision as to the jurisdiction of District Courts; to confer an equitable jurisdiction upon such courts; for these and other purposes to amend the District Courts Act, 1912-1947, and the Matrimonial Causes Act 1899, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. C. E. MARTIN;—25 October, 1949.]

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

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1949."

10445 440—A

Short title,
citation and
commence-
ment.

(2)

District Courts (Amendment).

(2) The District Courts Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may be cited as the District Courts Act, 1912-1949.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

- 10 (a) by omitting subsection one of section four and by inserting in lieu thereof the following new subsection:—

Amendment
of Act No.
23, 1912.
Sec. 4.
(Appoint-
ment of
District
Courts.)

- 15 (1) The Governor may, by proclamation in the Gazette, order that courts, to be called District Courts, shall be holden at such towns and places and at such times as he thinks fit and may, in like manner, alter the place or time for holding any such court, or order that the holding of any such court be discontinued.

- 20 (b) by omitting subsection two of section five and by inserting in lieu thereof the following subsection:—

Sec. 5.
(Creation of
district.)

- 25 (2) Any such proclamation shall take effect from the date of notification thereof in the Gazette or from such later date as may be specified therein.

- 30 (c) (i) by omitting from subsection two of section seven the words "at present";
(ii) by omitting from the same subsection the words "so long as such jurisdiction as last aforesaid continues";

Sec. 7.
(Juris-
diction:
claims
under £10.)

- (d) by omitting section ten and by inserting in lieu thereof the following section:—

Substituted
sec. 10.

- 35 10. (1) In any action or matter pending in any District Court—

Change of
venue.

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

(b)

District Courts (Amendment).

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

5 the judge may change the venue and direct the trial or hearing to be had in some other District Court, and may for that purpose make all such orders, and (where the venue is changed at the instance of any party) impose such terms and conditions, as justice appears to require.

10 (2) Where the venue is changed the registrar of the District Court in which the action or matter was commenced shall forthwith transmit by post the whole record thereof to the registrar of the District Court to which the action or matter is to be sent.

15 (3) The judge and registrar of such last-mentioned District Court shall have the same jurisdiction and powers in respect of such action or matter as if it had been commenced in that District Court, and all further proceedings in
20 the action or matter shall be had as if it had been so commenced.

(4) Where the venue of an action or matter is changed to another District Court, the judge of that District Court shall appoint a
25 day for the hearing, notice whereof shall be sent by the registrar by post or otherwise to the parties.

(e) by inserting at the end of subsection one of section fourteen the words "Such judge as the
30 Governor determines shall be Chairman of the District Court Judges";

Sec. 14.
(Appoint-
ment and
qualification
of judges.)

(f) by omitting section fifteen and by inserting in lieu thereof the following section:—

Substituted
sec. 15.

35 15. Each District Court judge is constituted a judge of every District Court and chairman of every court of quarter sessions in New South Wales, and each such judge or chairman, as the case may be, shall exercise jurisdiction in such district or districts as the Minister shall from time

Judges
appointed
for New
South
Wales.

District Courts (Amendment).

time to time appoint in respect of such judge or chairman.

- (g) by omitting subsection two of section sixteen and by inserting in lieu thereof the following subsections:—

Sec. 16.
(Two or more judges appointed in same district.)

(2) Where two or more District Court judges are appointed to exercise jurisdiction in one and the same district, only one of such judges shall sit, preside or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers and in the discharge of other administrative duties imposed by this Act upon the judge of any District Court, the concurrence of such number of judges as may be prescribed in respect of that district shall be required.

(2A) Subject to the provisions of this Act, sittings of the District Courts shall be arranged by the Chairman of the District Court judges.

- (h) by omitting sections twenty-one, twenty-two and twenty-three and by inserting in lieu thereof the following section:—

Secs. 21-23.
(Registrars.)

21. (1) There shall be a registrar for every District Court.

(2) (a) In the case of the District Court of the Metropolitan District holden at Sydney the registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed registrar of such court under the provisions of this paragraph.

(b) In every other case the registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(i)

District Courts (Amendment).

- (i) by omitting from section twenty-four the words Sec. 24.
 "The Governor may appoint an assistant (Assistant
 registrar to act at any place" and by inserting registrar.)
 in lieu thereof the following paragraphs:—

5 The Governor may, from time to time, appoint
 places at which the powers and duties herein-
 after mentioned may be exercised by an assistant
 registrar. The places at which an assistant
 10 registrar acted immediately before the com-
 mencement of the District Courts (Amendment)
 Act, 1949, shall be deemed to be places appointed
 by the Governor pursuant to the foregoing
 provisions of this section.

15 In the case of the District Court of the
 Metropolitan District holden at Sydney the
 assistant registrar shall be appointed by the
 Governor. The person who at the commence-
 ment of the District Courts (Amendment) Act,
 20 1949, held office as assistant registrar of the
 District Court of the Metropolitan District
 holden at Sydney shall be deemed to have been
 appointed assistant registrar of such court
 under the provisions of this section.

25 In every other case at each place appointed
 by the Governor pursuant to the provisions of
 this section the assistant registrar shall be the
 person for the time being holding office as, or
 discharging the functions of, clerk of petty
 sessions at such place.

- 30 (j) (i) by omitting from subsection one of section Sec. 30.
 thirty the words "or partner of such (Disabilities
 registrar"; of registrar
and bailiff.

(ii) by omitting from the same subsection the
 words "or partner" wherever occurring;

- 35 (iii) by omitting from the same subsection the
 words "by himself or his partner";

- (k) by omitting section thirty-one;

Sec. 31.
(Registrar and
bailiff to give
security.)

(1)

District Courts (Amendment).

- (l) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division:—

Division 4.
(Time and
place for
holding
court.)

DIVISION 4.—Adjournment of court.

- 5 32. Where for any reason it is not practicable for a sitting of a District Court to take place on the date appointed therefor, the registrar, or in the event of his death or absence the bailiff, shall adjourn the court to such hour or such later date as he may deem convenient.

Adjourn-
ment of
court.

- 10 (m) by omitting section thirty-five;

Sec. 35.
(Court fees
to be denoted
by stamps.)
New sec.
52A.

- (n) by inserting next after section fifty-two the following new section:—

- 15 52A. Actions or matters pending or arising in any court between the same parties may be consolidated by order of a judge, upon such terms as he thinks just and reasonable.

Consolida-
tion of
trials.

- 20 (o) (i) by omitting from section sixty-seven the words “seven days” and by inserting in lieu thereof the words “the prescribed number of days”;

Sec. 67.
(Judgment
in default of
defence.)

- (ii) by omitting from the same section the words “ten days” and by inserting in lieu thereof the words “the prescribed number of days”;

- 25 (iii) by inserting at the end of the same section the words “For the purposes of this section rules of court may prescribe numbers of days varying according to whether the defendant is served within or outside the district for which such court is constituted and in the latter case varying according to the distance of the place where the defendant is served from such court”;
- 30

- 35 (p) by omitting from section sixty-eight the words “mentioned in the last preceding section” and by inserting in lieu thereof the words “prescribed pursuant to section sixty-seven of this Act”;

Sec. 68.
(Defence
lodged after
time.)

(q)

District Courts (Amendment).

- (q) (i) by omitting from section seventy-three the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- 5 (ii) by inserting at the end of the same section the following new proviso:—
- Provided further that where the matter the subject of such set-off or cross action involves an amount in excess of one thousand pounds, the defendant may abandon the excess, which abandonment shall be notified to the plaintiff in the manner prescribed, and may pursue the matter the subject of such set-off or cross action to an amount not exceeding one thousand pounds.
- 10
- 15
- (r) (i) by inserting next after paragraph (d) of subsection one of section seventy-five the following new paragraph:—
- 20 (e) be allowed to raise such other defence or defences as may be prescribed by rules of court;
- (ii) (a) by omitting from subsection two of the same section the word "hereafter";
- 25 (b) by omitting from the same subsection the words "at present";
- (s) by omitting from section ninety-one the words "two pounds" and by inserting in lieu thereof the words "four pounds";
- 30 (t) by omitting subsections one and two of section one hundred and by inserting in lieu thereof the following subsection:—
- (1) Where any judgment for a plaintiff or defendant has been given or entered up in a District Court the judge may at any time order the same to be paid at such time or times and by such instalments, if any, as he thinks fit.
- 35
- (u)

Sec. 73.
(Proceedings where defendant's set-off or cross action exceeds the plaintiff's claim.)

Sec. 75.
(Notice of equitable and special defence.)

Sec 91.
(Party requiring jury to make deposit.)

Sec. 100.
(Judgment payable by instalments.)

District Courts (Amendment).

- (u) by omitting section one hundred and one and by inserting in lieu thereof the following section:—

Substituted
sec. 101.

5

101. Where in any action in a District Court for a debt or liquidated demand, judgment by default or confession is entered up against one or more of several defendants, the plaintiff may enforce such judgment without prejudice to his right to proceed against, and to enforce any judgment obtained against, any other defendant or defendants, except in so far as satisfaction by any defendant operates in favour of all.

Judgment
against
some only
of
defendants.

10

- (v) by inserting next after section one hundred and three the following new section:—

New sec.
103A.

15

103A. (1) Any judgment debtor in a District Court (in this section referred as "the first court") who has obtained judgment against his judgment creditor in some other District Court (in this section referred to as "the second court") may make application to the judge of the first court for an order that the judgment against him be set off against the judgment in his favour.

Set-off of
judgments.

20

(2) Where any such order has been made, and—

25

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

30

- (b) the amount of the judgment in the first court is greater than the amount of the judgment in the second court, the amount of the judgment in the first court shall be reduced by the amount of

35

of

District Courts (Amendment).

of the judgment in the second court, and
the judgment in the second court shall
be deemed to be satisfied.

5 (w) by inserting in section one hundred and four after the word "may" the words "except where otherwise directed by the judge";

Sec. 104.
(Judgment payable by instalments.)

(x) by omitting from section one hundred and five the words "six years" and by inserting in lieu thereof the words "twenty years";

Sec. 105.
(Execution in twenty years without revival.)

10 (y) (i) by omitting from subsection one of section one hundred and ten the words "by the said registrar, by himself or his deputy" and by inserting in lieu thereof the words "pursuant to this Act";

Sec. 110.
(Registrar to execute deed of sale.)

15 (ii) by omitting from the same subsection the word "said" where secondly occurring;

(iii) by omitting from the same section the words "bargain and sale" wherever occurring and by inserting in lieu thereof the word "assurance";

20

(z) by omitting the proviso to section one hundred and twelve and by inserting in lieu thereof the following proviso:—

Sec. 112.
(Bailiff to seize personal property.)

Provided that—

25 (a) wearing apparel;

(b) bedding;

(c) tools; and

(d) implements of trade;

30

of the said person and his family, to the value of ten pounds in respect of each such class of goods shall be protected from seizure.

(aa)

District Courts (Amendment).

(aa) by omitting section one hundred and thirteen;

Sec. 113.
(When goods seized under process of District Courts landlord may claim certain rent in arrears.)

5 (bb) (i) by inserting in subsection one of section one hundred and sixteen after the word "registrar" where secondly occurring the words "or the judge or registrar of the court of the district in which the judgment debtor resides";

Sec. 116.
(Examination of debtor, when judgment, etc., for recovery of money.)

(ii) by omitting subsection three of the same section;

10 (cc) by inserting next after section one hundred and twenty the following new section:—

New sec. 120A.

15 120A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt.

Lien or claim of third person on debt.

20 (2) After hearing the allegations of any third person under any such order as mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the judge to appear, or in case of
25 such third person not appearing when ordered, the judge may order execution to issue as provided in section one hundred and nineteen of this Act, or may order any issue or question arising to be tried or determined, and may bar
30 the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reason-
35 able.

(dd)

District Courts (Amendment).

(dd) by inserting next after section one hundred and twenty-five the following new section:—

New sec.
125A.

5 125A. For the purposes of this Division of this Part of this Act "judgment" includes any order for the payment of a sum of money whether as costs or otherwise.

Definition
of "judg-
ment."

10 (ee) (i) by omitting from section one under the matter relating to Part II the words and figures "Division 4.—Time and place for holding court—s. 32" and by inserting in lieu thereof the following words and figures "Division 4.—Adjournment of court—s. 32";

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

15 (ii) by omitting from the same section the symbols "125" and by inserting in lieu thereof the symbols "125A";

3. The Principal Act is further amended—

Further
amendment
of Act No.
23, 1912.

20 (a) (i) by omitting from subsection one of section forty-one the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 41.
(Ordinary
jurisdiction
of the
courts.)

(ii) by omitting subsection two of the same section;

25 (b) by omitting from section forty-two the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 42.
(Jurisdiction
in cases of
partnership,
intestacy
and legacy.)

30 (c) by omitting from section fifty-five the words "four hundred pounds" wherever occurring and by inserting in lieu thereof the words "one thousand pounds";

Sec. 55.
(Splitting
debt by
giving
bills, etc.)

(d) by omitting from section fifty-seven the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 57.
(Infants.)

(e)

District Courts (Amendment).

(e) by omitting section fifty-eight.

4. The Principal Act is further amended—

(a) by inserting next after section one hundred and thirty-one the following new Part:—

Sec. 58.
(Actions by
physicians,
etc.)
Further
amendment
of Act No. 23,
1912.

New
Part IIIA.

5

PART IIIA.

JURISDICTION IN EQUITY.

10

131A. (1) A District Court shall have and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say—

Jurisdic-
tion in
equity.
cf. 24 and
25, Geo. V,
c. 53, ss.
52, etc.

15

(a) for foreclosure or redemption or for enforcing any charge or lien where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds;

20

(b) for specific performance of or for the rectification, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds;

25

(c) applications for an order under section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, where the amount claimed does not exceed the sum of five hundred pounds;

30

(d) actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds;

35

(e)

District Courts (Amendment).

(e) for the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of five hundred pounds;

5 (f) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the sum of five hundred pounds.

10 (2) In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of the Chief Judge in Equity, and the registrar and bailiff respectively shall in all such actions
15 or matters discharge any duties which an officer of the Supreme Court can discharge, either under the order of the said Chief Judge in Equity or under the practice of the Supreme Court in Equity, and all officers of the District
20 Courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

(3) If during the progress of any action or matter under subsection one of this section
25 it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall
30 be the duty of the judge to direct the action or matter to be transferred to the Supreme Court in its equitable jurisdiction, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the rules of the
35 Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts:

Provided always, that it shall be lawful for any party to apply to the Chief Judge in Equity at chambers for an order authorising and
40 directing the action or matter to be carried on and

District Courts (Amendment).

5 and prosecuted in the District Court, notwithstanding such excess in the amount or value of
the limit to which equitable jurisdiction is given
by subsection one of this section; and the Chief
Judge in Equity, if he shall deem it right to
summon the other parties, or any of them, to
appear before him for that purpose, after
hearing such parties, or on default of the
appearance of all or any of them, shall have full
10 power to make such order.

15 (4) Where any action or matter is pending in the Supreme Court in its equitable jurisdiction which might have been commenced in a District Court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the Chief Judge in Equity to have the same transferred to the District Court in which the same might have been commenced, and the Chief Judge in Equity shall have power
20 upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the District Court to which the same shall be ordered to be transferred, and the parties thereto shall have the
25 same right of appeal as they would have had if the action or matter had been commenced in such District Court.

30 (5) If during the progress of any action or matter under subsection one of this section (not being an action or matter transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be
35 transferred to the Supreme Court in its equitable jurisdiction, then without prejudice to the validity of any order already made the judge may direct the action or matter to be transferred accordingly, and the whole of the
40 procedure in the said action or matter when so transferred

District Courts (Amendment).

transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts.

- 5 (b) by inserting next after subsection one of section seven the following new subsection:—

Sec. 7.
(Jurisdiction: in equity.)

(1A) Notwithstanding the provisions of subsection one of this section—

- 10 (a) proceedings which relate to the foreclosure, redemption, recovery or sale of any mortgage, charge, or lien on any lands, tenements, or hereditaments, shall be taken in the court for the district within which the lands, tenements, or hereditaments, or any part thereof, are situated;

- 15 (b) proceedings under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, pursuant to paragraph (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:

- 20 (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:
- 25
- 30 Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other court it shall be competent for the court to transfer the same to such other court, and thereupon the proceedings shall be taken in such other court and the provisions of section ten of this Act shall, mutatis mutandis, apply thereto.

35

(c)

District Courts (Amendment).

- (c) by inserting after paragraph (d) of section one hundred and forty-two the following word and new paragraph—

Sec. 142.
(Appeal.)

“or

- 5 (e) in any action or matter taken pursuant to Part IIIA of this Act in which the amount in issue exceeds ten pounds”;

- (d) by inserting in section one after the matter relating to Part III the following new matter:—

Sec. 1.
(Division into Parts.)
(Consequential.)

10 PART IIIA.—JURISDICTION IN EQUITY—s. 131A.

5. The Principal Act is further amended:—

Further amendment of Act No. 23, 1912.
Sec. 140.
(Actions of tort in Supreme Court may be remitted to District Court.)

- 15 (b) by omitting from section one hundred and forty-one the words “under either of the two last preceding sections” and by inserting in lieu thereof the words “under section one hundred and thirty-nine of this Act”;

Sec. 141.
(When action remitted to District Court plaintiff to lodge original writ.)
(Consequential.)

- 20 (c) by omitting section one hundred and forty-five and by inserting in lieu thereof the following section:—

Substituted sec. 145.

145. (1) Except as provided in this section an appeal shall not operate as a stay of proceedings.

When appeal to operate as stay of proceedings, security for costs and power of Supreme Court on appeal.

- 25 (2) (a) A judge of the District Court, on application made within the prescribed time, may order that proceedings shall be stayed during the period within which an appeal may be brought.

(b)

District Courts (Amendment).

(b) If, within such period, an appeal is brought and—

5

(i) when such order is made on the application of the plaintiff, security is given to the satisfaction of the registrar of the District Court for such amount in respect of the defendant's costs of the action as may be assessed by the registrar; or

10

(ii) when such order is made on the application of the defendant, security is given to the satisfaction of the registrar of the District Court for the amount of the verdict and such amount in respect of the plaintiff's costs of the action as may be assessed by the registrar;

15

such stay shall continue until the appeal is disposed of or until a judge of the District Court otherwise orders.

20

(3) In any appeal the Supreme Court may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party, and make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

25

(d) by omitting from section one hundred and forty-eight the words "six years" wherever appearing, and by inserting in lieu thereof the words "one year";

30

(e) by omitting section one hundred and forty-nine and by inserting in lieu thereof the following sections:—

35

149. (1) In any case not expressly provided for by this Act or by rules of court made thereunder, the practice and procedure for the time being of the Supreme Court shall be adopted as far as practicable.

Substituted
sec. 149, and
new secs.
150-152.

Procedure
of District
Court in
certain
cases.

District Courts (Amendment).

(2) Nothing in this section shall affect the powers of a judge of the District Court under section nineteen of the Administration of Justice Act, 1924, as amended by subsequent Acts.

150. Where by or under any Act or Commonwealth Act a right of appeal to a District Court is conferred, then, unless the contrary intention appears, such appeal shall be heard and disposed of by a judge sitting without a jury.

Appeals
under any
Act to
District
Court.

151. The District Court judges shall—

(a) assemble once at least every six months for the purpose of considering the operation of this Act and the rules of court for the time being in force, and also the working of the several District Court offices, and the arrangements relative to the duties of the officers of the District Courts, and of enquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said courts, and

Judges to
meet
regularly
and make
recommen-
dations.
cf. 1935,
No. 2253
(S.A.), s.
16.

(b) report, once at least every six months, to the Attorney-General what (if any) amendments it would, in their judgment, be expedient to make in this Act, or in the rules of court, or otherwise relating to the administration of justice in District Courts, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice in District Courts.

152. (1) The District Court judges or a majority of them shall have power, by rules of court, not inconsistent with this Act, to prescribe

Rules of
court.

all

District Courts (Amendment).

all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and to revoke, amend or vary any such rules of court.

(2) Without limiting the generality of the foregoing power rules of court may be made for and in respect of—

(a) the practice of the courts and the forms of proceedings therein;

(b) the scales of fees and costs to be paid to barristers and attorneys;

(c) the expenses to be paid to witnesses;

(d) the court fees payable in any proceedings under this Act relating to the examination of judgment debtors or the attachment of debts;

(e) the keeping of all books, entries, and accounts required to be kept by the registrars and bailiffs;

(f) the alteration of the number of days by or under this Act limited for any purpose and the substitution of other days therefor;

(g) the regulation of the manner in which applications or appeals to a court or judge under any statute may be made, and the practice and procedure to be observed upon any such application or appeal.

(3) All rules of court so made shall—

(a) after approval by the Attorney-General, be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in such rules; and

(c)

District Courts (Amendment).

5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

15 (4) Non-compliance with any of the rules of court shall not render any proceeding void unless a judge so directs, but any such proceeding may be set aside, either wholly or in part as irregular, or amended or otherwise
20 dealt with in such manner and upon such terms (if any) as appear to the judge to be just.

25 (5) The general rules made under this Act and in force at the commencement of the District Courts (Amendment) Act, 1949, shall continue in force and have the same force and effect as if the same were rules of court made under this section.

30 (f) by omitting from section three the words "general rules" and by inserting in lieu thereof the words "rules of court"; Sec. 3.
(Consequential.)

(g) by omitting from section sixty-four the words "by general rules made under this Act"; Sec. 64.
(Consequential.)

35 (h) by omitting from section one the symbols "149" and by inserting in lieu thereof the symbols "152." Sec. 1.
(Division into Parts.)
(Consequential.)

District Courts (Amendment).

6. (1) The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new section:—

Further amendment of Act No. 23, 1912. New sec. 133A.

5 133A. (1) The questions of fact arising in any suit under the Matrimonial Causes Act 1899, as amended by subsequent Acts, where—

Questions of fact in undefended matrimonial cases triable in certain cases in District Courts.

(a) no appearance has been entered; and

10 (b) the registered office of the solicitor for the petitioner is situated outside the County of Cumberland,

shall, unless cause to the contrary be shown, be reduced into writing and remitted by the Supreme Court to be tried by a judge of a District Court without a jury.

15 (2) The powers of the Supreme Court under this section shall be exercised by the registrar of the matrimonial causes jurisdiction or other officer of the said court settling the issues, in private chambers, without any motion being filed or moved.

20 (3) At the time of settling the issues, such registrar or other officer shall endorse thereon the District Court at which the trial is to be had, the date of sitting of such court, the fact that the trial is to be without a jury, and such other matter as may to him appear proper for fixing the time, place and mode of trial, and the return of the findings.

(4) The endorsement so made shall have the like effect as an order of the Supreme Court.

30 (5) The judge of the District Court presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

(6) The provisions of this section shall not apply to any suit—

35 (a) for restitution of conjugal rights;
(b) for dissolution of marriage or judicial separation on the ground of non-compliance with a decree for restitution of conjugal rights;

(c)

District Courts (Amendment).

- (c) in which damages are claimed;
- (d) in which it appears on the record that the petitioner has committed adultery; or
- (e) in which jurisdiction is derived from the Matrimonial Causes Act 1945 of the Parliament of the Commonwealth of Australia.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after section ninety-three the following new section:—

Amendment of Act No. 14, 1899. New sec. 93A.

- 10 93A. Where questions of fact in any suit have been remitted for trial pursuant to section 133A of the District Courts Act, 1912-1949, the power, authority and jurisdiction of the Supreme Court to pronounce a decree in, or to dismiss, such suit, and
- 15 all powers, authorities and jurisdiction incidental thereto (including matters relating to costs, custody and access) shall be exercisable by the registrar or any deputy registrar.

Decrees in certain cases to be pronounced by registrar.

(3) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1949.

District Courts (Amendment) Bill, 1949.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (1) to increase the general common law jurisdiction of district courts from £400 to £1,000;
- (2) to repeal section 140 of the District Courts Act, 1912, as amended. This section at present denies to plaintiffs in certain circumstances the right to have an action tried in the Supreme Court;
- (3) to confer upon district courts an equitable jurisdiction limited as to specified amounts and subject matters;
- (4) to provide that, in certain classes of undefended cases arising in the Matrimonial Causes Jurisdiction of the Supreme Court, the issues shall be automatically remitted for trial in district courts, and to make certain incidental provisions in this regard;
- (5) to re-cast in more liberal and more flexible terms the requirements as to the giving of security upon appeals from a district court to the Supreme Court;
- (6) to provide for the establishment of a Council of Judges of the district court to report at intervals upon, inter alia, the functioning of the district courts;
- (7) to provide for the appointment of one of the judges as Chairman of the District Court Judges;
- (8) to provide for the fixing of the times of district court sittings by the Governor, and, subject to the Act, that the arrangement of sittings is to be a function of the Chairman of the District Court Judges;
- (9) to provide that additional special defences, to be prescribed, must be specially pleaded;
- (10) to provide that, in general, clerks of petty sessions be constituted ex officio district court registrars;
- (11) to assimilate the power of district courts to entertain counter claims to that of the Supreme Court;
- (12) to amend certain provisions of the District Courts Act relating to the enforcement and execution of judgments; and
- (13) to effect certain other minor amendments, and amendments of a machinery nature, to the District Courts Act, 1912, as amended by subsequent Acts.

No. , 1949.

A BILL

To make further provision as to the jurisdiction of District Courts; to confer an equitable jurisdiction upon such courts; for these and other purposes to amend the District Courts Act, 1912-1947, and the Matrimonial Causes Act, 1899, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. C. E. MARTIN;—25 October, 1949.]

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

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1949."

10445 440—A

(2)

Short title,
citation and
commence-
ment.

District Courts (Amendment).

(2) The District Courts Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may
5 be cited as the District Courts Act, 1912-1949.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

- 10 (a) by omitting subsection one of section four and
by inserting in lieu thereof the following new
subsection:—
- (1) The Governor may, by proclamation in
the Gazette, order that courts, to be called Dis-
15 trict Courts, shall be holden at such towns and
places and at such times as he thinks fit and
may, in like manner, alter the place or time for
holding any such court, or order that the holding
of any such court be discontinued.
- 20 (b) by omitting subsection two of section five and by
inserting in lieu thereof the following subsec-
tion:—
- (2) Any such proclamation shall take effect
from the date of notification thereof in the
25 Gazette or from such later date as may be
specified therein.
- (c) (i) by omitting from subsection two of section
seven the words “at present”;
(ii) by omitting from the same subsection the
30 words “so long as such jurisdiction as last
aforesaid continues”;
- (d) by omitting section ten and by inserting in lieu
thereof the following section:—
10. (1) In any action or matter pending in
35 any District Court—
- (a) if it appears that a fair or unprejudiced
trial of any issue cannot otherwise be
had; or
- (b)

Amendment
of Act No.
23, 1912.

Sec. 4.

(Appoint-
ment of
District
Courts.)

Sec. 5.

(Creation of
district.)

Sec. 7.

(Juris-
diction:
claims
under £10.)

Substituted
sec. 10.

Change of
venue.

District Courts (Amendment).

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

5 the judge may change the venue and direct the trial or hearing to be had in some other District Court, and may for that purpose make all such orders, and (where the venue is changed at the instance of any party) impose such terms and conditions, as justice appears to require.

10 (2) Where the venue is changed the registrar of the District Court in which the action or matter was commenced shall forthwith transmit by post the whole record thereof to the registrar of the District Court to which the action or matter is to be sent.

15 (3) The judge and registrar of such last-mentioned District Court shall have the same jurisdiction and powers in respect of such action or matter as if it had been commenced in that District Court, and all further proceedings in the action or matter shall be had as if it had been so commenced.

20 (4) Where the venue of an action or matter is changed to another District Court, the judge of that District Court shall appoint a day for the hearing, notice whereof shall be sent by the registrar by post or otherwise to the parties.

25 (e) by inserting at the end of subsection one of section fourteen the words "Such judge as the Governor determines shall be Chairman of the District Court Judges";

30

Sec. 14.
(Appoint-
ment and
qualification
of judges.)

(f) by omitting section fifteen and by inserting in lieu thereof the following section:—

Substituted
sec. 15.

35 15. Each District Court judge is constituted a judge of every District Court and chairman of every court of quarter sessions in New South Wales, and each such judge or chairman, as the case may be, shall exercise jurisdiction in such district or districts as the Minister shall from time

Judges
appointed
for New
South
Wales.

District Courts (Amendment).

time to time appoint in respect of such judge or chairman.

- (g) by omitting subsection two of section sixteen and by inserting in lieu thereof the following subsections:—

Sec. 16.
(Two or more judges appointed in same district.)

(2) Where two or more District Court judges are appointed to exercise jurisdiction in one and the same district, only one of such judges shall sit, preside or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers and in the discharge of other administrative duties imposed by this Act upon the judge of any District Court, the concurrence of such number of judges as may be prescribed in respect of that district shall be required.

(2A) Subject to the provisions of this Act, sittings of the District Courts shall be arranged by the Chairman of the District Court judges.

- (h) by omitting sections twenty-one, twenty-two and twenty-three and by inserting in lieu thereof the following section:—

Secs. 21-23.
(Registrars.)

21. (1) There shall be a registrar for every District Court.

(2) (a) In the case of the District Court of the Metropolitan District holden at Sydney the registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed registrar of such court under the provisions of this paragraph.

(b) In every other case the registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(i)

District Courts (Amendment).

- (i) by omitting from section twenty-four the words Sec. 24.
 "The Governor may appoint an assistant (Assistant
 registrar to act at any place" and by inserting registrar.)
 in lieu thereof the following paragraphs:—
- 5 The Governor may, from time to time, appoint
 places at which the powers and duties herein-
 after mentioned may be exercised by an assistant
 registrar. The places at which an assistant
 10 registrar acted immediately before the com-
 mencement of the District Courts (Amendment)
 Act, 1949, shall be deemed to be places appointed
 by the Governor pursuant to the foregoing
 provisions of this section.
- 15 In the case of the District Court of the
 Metropolitan District holden at Sydney the
 assistant registrar shall be appointed by the
 Governor. The person who at the commence-
 ment of the District Courts (Amendment) Act,
 20 1949, held office as assistant registrar of the
 District Court of the Metropolitan District
 holden at Sydney shall be deemed to have been
 appointed assistant registrar of such court
 under the provisions of this section.
- 25 In every other case at each place appointed
 by the Governor pursuant to the provisions of
 this section the assistant registrar shall be the
 person for the time being holding office as, or
 discharging the functions of, clerk of petty
 sessions at such place.
- 30 (j) (i) by omitting from subsection one of section Sec. 30.
 thirty the words "or partner of such (Disabilities
 registrar" ; of registrar
 and bailiff."
- (ii) by omitting from the same subsection the
 words "or partner" wherever occurring;
- 35 (iii) by omitting from the same subsection the
 words "by himself or his partner";
- (k) by omitting section thirty-one; Sec. 31.
 (Registrar and
 bailiff to give
 security.)
- (1)

District Courts (Amendment).

- (l) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division:—

Division 4.
(Time and
place for
holding
court.)

DIVISION 4.—*Adjournment of court.*

- 5 32. Where for any reason it is not practicable for a sitting of a District Court to take place on the date appointed therefor, the registrar, or in the event of his death or absence the bailiff, shall adjourn the court to such hour or such later date as he may deem convenient.

Adjourn-
ment of
court.

- 10 (m) by omitting section thirty-five;

Sec. 35.
(Court fees
to be denoted
by stamps.)
New sec.
52A.

- (n) by inserting next after section fifty-two the following new section:—

- 15 52A. Actions or matters pending or arising in any court between the same parties may be consolidated by order of a judge, upon such terms as he thinks just and reasonable.

Consolida-
tion of
trials.

- 20 (o) (i) by omitting from section sixty-seven the words “seven days” and by inserting in lieu thereof the words “the prescribed number of days”;

Sec. 67.
(Judgment
in default of
defence.)

- (ii) by omitting from the same section the words “ten days” and by inserting in lieu thereof the words “the prescribed number of days”;

- 25 (iii) by inserting at the end of the same section the words “For the purposes of this section rules of court may prescribe numbers of days varying according to whether the defendant is served within or outside the district for which such court is constituted and in the latter case varying according to the distance of the place where the defendant is served from such court”;

- 30 (p) by omitting from section sixty-eight the words “mentioned in the last preceding section” and by inserting in lieu thereof the words “prescribed pursuant to section sixty-seven of this Act”;

Sec. 68.
(Defence
lodged after
time.)

(q)

District Courts (Amendment).

- (q) (i) by omitting from section seventy-three the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- 5 (ii) by inserting at the end of the same section the following new proviso:—
- Provided further that where the matter the subject of such set-off or cross action involves an amount in excess of one thousand pounds, the defendant may abandon the excess, which abandonment shall be notified to the plaintiff in the manner prescribed, and may pursue the matter the subject of such set-off or cross action to an amount not exceeding one thousand pounds.
- 10
- 15
- (r) (i) by inserting next after paragraph (d) of subsection one of section seventy-five the following new paragraph:—
- 20 (e) be allowed to raise such other defence or defences as may be prescribed by rules of court;
- (ii) (a) by omitting from subsection two of the same section the word "hereafter";
- 25 (b) by omitting from the same subsection the words "at present";
- (s) by omitting from section ninety-one the words "two pounds" and by inserting in lieu thereof the words "four pounds";
- 30 (t) by omitting subsections one and two of section one hundred and by inserting in lieu thereof the following subsection:—
- (1) Where any judgment for a plaintiff or defendant has been given or entered up in a District Court the judge may at any time order the same to be paid at such time or times and by such instalments, if any, as he thinks fit.
- 35
- (u)

Sec. 73.
(Proceedings where defendant's set-off or cross action exceeds the plaintiff's claim.)

Sec. 75.
(Notice of equitable and special defence.)

Sec 91.
(Party requiring jury to make deposit.)

Sec. 100.
(Judgment payable by instalments.)

District Courts (Amendment).

- (u) by omitting section one hundred and one and by inserting in lieu thereof the following section:—

Substituted
sec. 101.

5 101. Where in any action in a District Court for a debt or liquidated demand, judgment by default or confession is entered up against one or more of several defendants, the plaintiff may enforce such judgment without prejudice to his right to proceed against, and to enforce any judgment obtained against, any other defendant or defendants, except in so far as satisfaction by any defendant operates in favour of all.

Judgment
against
some only
of
defendants.

- (v) by inserting next after section one hundred and three the following new section:—

New sec.
103A.

15 103A. (1) Any judgment debtor in a District Court (in this section referred as "the first court") who has obtained judgment against his judgment creditor in some other District Court (in this section referred to as "the second court") may make application to the judge of the first court for an order that the judgment against him be set off against the judgment in his favour.

Set-off of
judgments.

(2) Where any such order has been made, and—

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

30 (b) the amount of the judgment in the first court is greater than the amount of the judgment in the second court, the amount of the judgment in the first court shall be reduced by the amount of

35

District Courts (Amendment).

of the judgment in the second court, and
the judgment in the second court shall
be deemed to be satisfied.

5 (w) by inserting in section one hundred and four after the word "may" the words "except where otherwise directed by the judge";

Sec. 104.
(Judgment
payable by
instalments.)

(x) by omitting from section one hundred and five the words "six years" and by inserting in lieu thereof the words "twenty years";

Sec. 105.
(Execution
in twenty
years
without
revival.)

10 (y) (i) by omitting from subsection one of section one hundred and ten the words "by the said registrar, by himself or his deputy" and by inserting in lieu thereof the words "pursuant to this Act";

Sec. 110.
(Registrar
to execute
deed of
sale.)

15 (ii) by omitting from the same subsection the word "said" where secondly occurring;

(iii) by omitting from the same section the words "bargain and sale" wherever occurring and by inserting in lieu thereof the word "assurance";

20

(z) by omitting the proviso to section one hundred and twelve and by inserting in lieu thereof the following proviso:—

Sec. 112.
(Bailiff to
seize
personal
property.)

Provided that—

25 (a) wearing apparel;

(b) bedding;

(c) tools; and

(d) implements of trade;

30 of the said person and his family, to the value of ten pounds in respect of each such class of goods shall be protected from seizure.

(aa)

District Courts (Amendment).

(aa) by omitting section one hundred and thirteen;

Sec. 118.
(When goods seized under process of District Courts landlord may claim certain rent in arrears.)

(bb) (i) by inserting in subsection one of section one hundred and sixteen after the word "registrar" where secondly occurring the words "or the judge or registrar of the court of the district in which the judgment debtor resides";

Sec. 116.
(Examination of debtor, when judgment, etc., for recovery of money.)

(ii) by omitting subsection three of the same section;

(cc) by inserting next after section one hundred and twenty the following new section:—

New sec. 120A.

120A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt.

Lien or claim of third person on debt.

(2) After hearing the allegations of any third person under any such order as mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the judge to appear, or in case of such third person not appearing when ordered, the judge may order execution to issue as provided in section one hundred and nineteen of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable.

(dd)

District Courts (Amendment).

(dd) by inserting next after section one hundred and twenty-five the following new section:—

New sec.
125A.

5 125A. For the purposes of this Division of this Part of this Act "judgment" includes any order for the payment of a sum of money whether as costs or otherwise.

Definition
of "judg-
ment."

10 (ee) (i) by omitting from section one under the matter relating to Part II the words and figures "Division 4.—Time and place for holding court—s. 32" and by inserting in lieu thereof the following words and figures "Division 4.—Adjournment of court—s. 32";

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

15 (ii) by omitting from the same section the symbols "125" and by inserting in lieu thereof the symbols "125A";

3. The Principal Act is further amended—

Further
amendment
of Act No.
23, 1912.

20 (a) (i) by omitting from subsection one of section forty-one the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 41.
(Ordinary
jurisdiction
of the
courts.)

(ii) by omitting subsection two of the same section;

25 (b) by omitting from section forty-two the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 42.
(Jurisdiction
in cases of
partnership,
intestacy
and legacy.)

30 (c) by omitting from section fifty-five the words "four hundred pounds" wherever occurring and by inserting in lieu thereof the words "one thousand pounds";

Sec. 55.
(Splitting
debt by
giving
bills, etc.)

(d) by omitting from section fifty-seven the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";

Sec. 57.
(Infants.)

(e)

District Courts (Amendment).

(e) by omitting section fifty-eight.

4. The Principal Act is further amended—

(a) by inserting next after section one hundred and thirty-one the following new Part:—

Sec. 58.
(Actions by
physicians,
etc.)
Further
amendment
of Act No. 23,
1912. New
Part IIIA.

5

PART IIIA.

JURISDICTION IN EQUITY.

131A. (1) A District Court shall have and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say—

Jurisdic-
tion in
equity.
cf. 24 and
25, Geo. V,
c. 53, ss.
52, etc.

10

(a) for foreclosure or redemption or for enforcing any charge or lien where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds;

15

(b) for specific performance of or for the rectification, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds;

20

25

(c) applications for an order under section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, where the amount claimed does not exceed the sum of five hundred pounds;

30

35

(d) actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds;

(e)

District Courts (Amendment).

(e) for the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of five hundred pounds;

5 (f) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the sum of five hundred pounds.

10 (2) In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of the Chief Judge in Equity, and the registrar and bailiff respectively shall in all such actions
15 or matters discharge any duties which an officer of the Supreme Court can discharge, either under the order of the said Chief Judge in Equity or under the practice of the Supreme Court in Equity, and all officers of the District
20 Courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

(3) If during the progress of any action or matter under subsection one of this section
25 it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall
30 be the duty of the judge to direct the action or matter to be transferred to the Supreme Court in its equitable jurisdiction, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the rules of the
35 Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts:

Provided always, that it shall be lawful for any party to apply to the Chief Judge in Equity at chambers for an order authorising and
40 directing the action or matter to be carried on
and

District Courts (Amendment).

and prosecuted in the District Court, notwithstanding such excess in the amount or value of the limit to which equitable jurisdiction is given by subsection one of this section; and the Chief Judge in Equity, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

(4) Where any action or matter is pending in the Supreme Court in its equitable jurisdiction which might have been commenced in a District Court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the Chief Judge in Equity to have the same transferred to the District Court in which the same might have been commenced, and the Chief Judge in Equity shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the District Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such District Court.

(5) If during the progress of any action or matter under subsection one of this section (not being an action or matter transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be transferred to the Supreme Court in its equitable jurisdiction, then without prejudice to the validity of any order already made the judge may direct the action or matter to be transferred accordingly, and the whole of the procedure in the said action or matter when so transferred

District Courts (Amendment).

transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts.

- 5 (b) by inserting next after subsection one of section seven the following new subsection:—

Sec. 7.
(Jurisdiction: in equity.)

(1A) Notwithstanding the provisions of subsection one of this section—

- 10 (a) proceedings which relate to the foreclosure, redemption, recovery or sale of any mortgage, charge, or lien on any lands, tenements, or hereditaments, shall be taken in the court for the district within which the lands, tenements, or hereditaments, or any part thereof, are situated;

- 15 (b) proceedings under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, pursuant to paragraph (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:

30 Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other court it shall be competent for the court to transfer the same to such other court, and thereupon the proceedings shall be taken in such other court and the provisions of section ten of this Act shall, mutatis mutandis, apply thereto.

35

(c)

District Courts (Amendment).

- (c) by inserting after paragraph (d) of section one hundred and forty-two the following word and new paragraph—

Sec. 142.
(Appeal.)

“or

5

- (e) in any action or matter taken pursuant to Part IIIA of this Act in which the amount in issue exceeds ten pounds”;

- (d) by inserting in section one after the matter relating to Part III the following new matter:—

Sec. 1.
(Division into Parts.)
(Consequential.)

10

PART IIIA.—JURISDICTION IN EQUITY—s. 131A.

5. The Principal Act is further amended:—

- (a) by omitting section one hundred and forty;

Further amendment of Act No. 28, 1912.
Sec. 140.
(Actions of tort in Supreme Court may be remitted to District Court.)

15

- (b) by omitting from section one hundred and forty-one the words “under either of the two last preceding sections” and by inserting in lieu thereof the words “under section one hundred and thirty-nine of this Act”;

Sec. 141.
(When action remitted to District Court plaintiff to lodge original writ.)
(Consequential.)

20

- (c) by omitting section one hundred and forty-five and by inserting in lieu thereof the following section:—

Substituted sec. 145.

145. (1) Except as provided in this section an appeal shall not operate as a stay of proceedings.

When appeal to operate as stay of proceedings, security for costs and power of Supreme Court on appeal.

25

(2) (a) A judge of the District Court, on application made within the prescribed time, may order that proceedings shall be stayed during the period within which an appeal may be brought.

(b)

District Courts (Amendment).

(b) If, within such period, an appeal is brought and—

5

(i) when such order is made on the application of the plaintiff, security is given to the satisfaction of the registrar of the District Court for such amount in respect of the defendant's costs of the action as may be assessed by the registrar; or

10

(ii) when such order is made on the application of the defendant, security is given to the satisfaction of the registrar of the District Court for the amount of the verdict and such amount in respect of the plaintiff's costs of the action as may be assessed by the registrar;

15

such stay shall continue until the appeal is disposed of or until a judge of the District Court otherwise orders.

20

(3) In any appeal the Supreme Court may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party, and make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

25

(d) by omitting from section one hundred and forty-eight the words "six years" wherever appearing, and by inserting in lieu thereof the words "one year";

30

(e) by omitting section one hundred and forty-nine and by inserting in lieu thereof the following sections:—

35

149. (1) In any case not expressly provided for by this Act or by rules of court made thereunder, the practice and procedure for the time being of the Supreme Court shall be adopted as far as practicable.

Sec. 148.
(Unclaimed
moneys.)

Substituted
sec. 149, and
new secs.
150-152.

Procedure
of District
Court in
certain
cases.

District Courts (Amendment).

(2) Nothing in this section shall affect the powers of a judge of the District Court under section nineteen of the Administration of Justice Act, 1924, as amended by subsequent Acts.

150. Where by or under any Act or Commonwealth Act a right of appeal to a District Court is conferred, then, unless the contrary intention appears, such appeal shall be heard and disposed of by a judge sitting without a jury.

Appeals under any Act to District Court.

151. The District Court judges shall—

Judges to meet regularly and make recommendations. cf. 1935, No. 2253 (S.A.), s. 16.

(a) assemble once at least every six months for the purpose of considering the operation of this Act and the rules of court for the time being in force, and also the working of the several District Court offices, and the arrangements relative to the duties of the officers of the District Courts, and of enquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said courts, and

(b) report, once at least every six months, to the Attorney-General what (if any) amendments it would, in their judgment, be expedient to make in this Act, or in the rules of court, or otherwise relating to the administration of justice in District Courts, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice in District Courts.

152. (1) The District Court judges or a majority of them shall have power, by rules of court, not inconsistent with this Act, to prescribe all

Rules of court.

District Courts (Amendment).

5 all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and to revoke, amend or vary any such rules of court.

(2) Without limiting the generality of the foregoing power rules of court may be made for and in respect of—

- 10 (a) the practice of the courts and the forms of proceedings therein;
- (b) the scales of fees and costs to be paid to barristers and attorneys;
- (c) the expenses to be paid to witnesses;
- 15 (d) the court fees payable in any proceedings under this Act relating to the examination of judgment debtors or the attachment of debts;
- (e) the keeping of all books, entries, and accounts required to be kept by the
- 20 registrars and bailiffs;
- (f) the alteration of the number of days by or under this Act limited for any purpose and the substitution of other days therefor;
- 25 (g) the regulation of the manner in which applications or appeals to a court or judge under any statute may be made, and the practice and procedure to be observed upon any such application or
- 30 appeal.

(3) All rules of court so made shall—

- (a) after approval by the Attorney-General, be published in the Gazette;
- 35 (b) take effect from the date of publication or from a later date to be specified in such rules; and

(c)

District Courts (Amendment).

5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

15 (4) Non-compliance with any of the rules of court shall not render any proceeding void unless a judge so directs, but any such proceeding may be set aside, either wholly or in part as irregular, or amended or otherwise
20 dealt with in such manner and upon such terms (if any) as appear to the judge to be just.

25 (5) The general rules made under this Act and in force at the commencement of the District Courts (Amendment) Act, 1949, shall continue in force and have the same force and effect as if the same were rules of court made under this section.

30 (f) by omitting from section three the words "general rules" and by inserting in lieu thereof the words "rules of court"; Sec. 3.
(Consequential.)

(g) by omitting from section sixty-four the words "by general rules made under this Act"; Sec. 64.
(Consequential.)

35 (h) by omitting from section one the symbols "149" and by inserting in lieu thereof the symbols "152." Sec. 1.
(Division into Parts.)
(Consequential.)

District Courts (Amendment).

6. (1) The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new section:—

Further amendment of Act No. 23, 1912. New sec. 133A.

5 133A. (1) The questions of fact arising in any suit under the Matrimonial Causes Act 1899, as amended by subsequent Acts, where—

Questions of fact in undefended matrimonial cases triable in certain cases in District Courts.

- 10 (a) no appearance has been entered; and
(b) the registered office of the solicitor for the petitioner is situated outside the County of Cumberland,

shall, unless cause to the contrary be shown, be reduced into writing and remitted by the Supreme Court to be tried by a judge of a District Court without a jury.

15 (2) The powers of the Supreme Court under this section shall be exercised by the registrar of the matrimonial causes jurisdiction or other officer of the said court settling the issues, in private chambers, without any motion being filed or moved.

20 (3) At the time of settling the issues, such registrar or other officer shall endorse thereon the District Court at which the trial is to be had, the date of sitting of such court, the fact that the trial is to be without a jury, and such other matter as may to him appear proper for fixing the time, place and mode of trial, and the return of the findings.

(4) The endorsement so made shall have the like effect as an order of the Supreme Court.

30 (5) The judge of the District Court presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

(6) The provisions of this section shall not apply to any suit—

- 35 (a) for restitution of conjugal rights;
(b) for dissolution of marriage or judicial separation on the ground of non-compliance with a decree for restitution of conjugal rights;

(c)

District Courts (Amendment).

- (c) in which damages are claimed;
- (d) in which it appears on the record that the petitioner has committed adultery; or
- 5 (e) in which jurisdiction is derived from the Matrimonial Causes Act 1945 of the Parliament of the Commonwealth of Australia.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after section ninety-three the following new section:—

Amendment of
Act No. 14,
1899. New
sec. 93A.

- 10 93A. Where questions of fact in any suit have been remitted for trial pursuant to section 133A of the District Courts Act, 1912-1949, the power, authority and jurisdiction of the Supreme Court to pronounce a decree in, or to dismiss, such suit, and
- 15 all powers, authorities and jurisdiction incidental thereto (including matters relating to costs, custody and access) shall be exercisable by the registrar or any deputy registrar.

Decrees in
certain
cases to be
pronounced
by registrar.

- (3) The Matrimonial Causes Act 1899, as amended
- 20 by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1949.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. 44, 1949.

An Act to make further provision as to the jurisdiction of District Courts; to confer an equitable jurisdiction upon such courts; for these and other purposes to amend the District Courts Act, 1912-1947, and the Matrimonial Causes Act 1899, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 16th November, 1949.]

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

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1949."

28189—A

(2)

Short title.
citation and
commence-
ment.

District Courts (Amendment).

(2) The District Courts Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may be cited as the District Courts Act, 1912-1949.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

Amendment
of Act No.
23, 1912.

Sec. 4.
(Appoint-
ment of
District
Courts.)

- (a) by omitting subsection one of section four and by inserting in lieu thereof the following new subsection:—

(1) The Governor may, by proclamation in the Gazette, order that courts, to be called District Courts, shall be holden at such towns and places and at such times as he thinks fit and may, in like manner, alter the place or time for holding any such court, or order that the holding of any such court be discontinued.

Sec. 5.
(Creation of
district.)

- (b) by omitting subsection two of section five and by inserting in lieu thereof the following subsection:—

(2) Any such proclamation shall take effect from the date of notification thereof in the Gazette or from such later date as may be specified therein.

Sec. 7.
(Juris-
diction:
claims
under £10.)

- (c) (i) by omitting from subsection two of section seven the words “at present”;
(ii) by omitting from the same subsection the words “so long as such jurisdiction as last aforesaid continues”;

Substituted
sec. 10.

- (d) by omitting section ten and by inserting in lieu thereof the following section:—

Change of
venue.

10. (1) In any action or matter pending in any District Court—

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

(b)

District Courts (Amendment).

- (b) if for any other reason it appears expedient to the judge so to do,

the judge may change the venue and direct the trial or hearing to be had in some other District Court, and may for that purpose make all such orders, and (where the venue is changed at the instance of any party) impose such terms and conditions, as justice appears to require.

(2) Where the venue is changed the registrar of the District Court in which the action or matter was commenced shall forthwith transmit by post the whole record thereof to the registrar of the District Court to which the action or matter is to be sent.

(3) The judge and registrar of such last mentioned District Court shall have the same jurisdiction and powers in respect of such action or matter as if it had been commenced in that District Court, and all further proceedings in the action or matter shall be had as if it had been so commenced.

(4) Where the venue of an action or matter is changed to another District Court, the judge of that District Court shall appoint a day for the hearing, notice whereof shall be sent by the registrar by post or otherwise to the parties.

- (e) by inserting at the end of subsection one of section fourteen the words "Such judge as the Governor determines shall be Chairman of the District Court Judges";

Sec. 14.

(Appointment and qualification of judges.)

- (f) by omitting section fifteen and by inserting in lieu thereof the following section:—

Substituted sec. 15.

15. Each District Court judge is constituted a judge of every District Court and chairman of every court of quarter sessions in New South Wales, and each such judge or chairman, as the case may be, shall exercise jurisdiction in such district or districts as the Minister shall from

Judges appointed for New South Wales.

time

District Courts (Amendment).

time to time appoint in respect of such judge or chairman.

Sec. 16.
(Two or more judges appointed in same district.)

- (g) by omitting subsection two of section sixteen and by inserting in lieu thereof the following subsections:—

(2) Where two or more District Court judges are appointed to exercise jurisdiction in one and the same district, only one of such judges shall sit, preside or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers and in the discharge of other administrative duties imposed by this Act upon the judge of any District Court, the concurrence of such number of judges as may be prescribed in respect of that district shall be required.

(2A) Subject to the provisions of this Act, sittings of the District Courts shall be arranged by the Chairman of the District Court judges.

Secs. 21-23.
(Registrars.)

- (h) by omitting sections twenty-one, twenty-two and twenty-three and by inserting in lieu thereof the following section:—

Registrars.

21. (1) There shall be a registrar for every District Court.

(2) (a) In the case of the District Court of the Metropolitan District holden at Sydney the registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed registrar of such court under the provisions of this paragraph.

(b) In every other case the registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(i)

District Courts (Amendment).

- (i) by omitting from section twenty-four the words Sec. 24.
 “The Governor may appoint an assistant registrar to act at any place” and by inserting (Assistant registrar.)
 in lieu thereof the following paragraphs:—

The Governor may, from time to time, appoint places at which the powers and duties herein-after mentioned may be exercised by an assistant registrar. The places at which an assistant registrar acted immediately before the commencement of the District Courts (Amendment) Act, 1949, shall be deemed to be places appointed by the Governor pursuant to the foregoing provisions of this section.

In the case of the District Court of the Metropolitan District holden at Sydney the assistant registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed assistant registrar of such court under the provisions of this section.

In every other case at each place appointed by the Governor pursuant to the provisions of this section the assistant registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at such place.

- (j) (i) by omitting from subsection one of section Sec. 30.
 thirty the words “or partner of such (Disabilities of registrar and bailiff.)
 registrar”;
- (ii) by omitting from the same subsection the words “or partner” wherever occurring;
- (iii) by omitting from the same subsection the words “by himself or his partner”;
- (k) by omitting section thirty-one;

Sec. 31.
 (Registrar and bailiff to give security.)

(l)

District Courts (Amendment).

Division 4.
(Time and
place for
holding
court.)

- (l) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division:—

DIVISION 4.—Adjournment of court.

Adjourn-
ment of
court.

32. Where for any reason it is not practicable for a sitting of a District Court to take place on the date appointed therefor, the registrar, or in the event of his death or absence the bailiff, shall adjourn the court to such hour or such later date as he may deem convenient.

Sec. 35.
(Court fees
to be denoted
by stamps.)
New sec.
52A.

- (m) by omitting section thirty-five;
(n) by inserting next after section fifty-two the following new section:—

52A. Actions or matters pending or arising in any District Court between the same parties may be consolidated by order of a judge, upon such terms as he thinks just and reasonable.

Consolida-
tion of
trials.

Sec. 67.
(Judgment
in default of
defence.)

- (o) (i) by omitting from section sixty-seven the words “seven days” and by inserting in lieu thereof the words “the prescribed number of days”;
(ii) by omitting from the same section the words “ten days” and by inserting in lieu thereof the words “the prescribed number of days”;
(iii) by inserting at the end of the same section the words “For the purposes of this section rules of court may prescribe numbers of days varying according to whether the defendant is served within or outside the district for which such court is constituted and in the latter case varying according to the distance of the place where the defendant is served from such court”;

Sec. 68.
(Defence
lodged after
time.)

- (p) by omitting from section sixty-eight the words “mentioned in the last preceding section” and by inserting in lieu thereof the words “prescribed pursuant to section sixty-seven of this Act”;

(q)

District Courts (Amendment).

- (q) (i) by omitting from section seventy-three the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds"; Sec. 73.
(Proceedings where defendant's set-off or cross action exceeds the plaintiff's claim.)
- (ii) by inserting at the end of the same section the following new proviso:—
- Provided further that where the matter the subject of such set-off or cross action involves an amount in excess of one thousand pounds, the defendant may abandon the excess, which abandonment shall be notified to the plaintiff in the manner prescribed, and may pursue the matter the subject of such set-off or cross action to an amount not exceeding one thousand pounds.
- (r) (i) by inserting next after paragraph (d) of subsection one of section seventy-five the following new paragraph:— Sec. 75.
(Notice of equitable and special defence.)
- (e) be allowed to raise such other defence or defences as may be prescribed by rules of court;
- (ii) (a) by omitting from subsection two of the same section the word "hereafter";
- (b) by omitting from the same subsection the words "at present";
- (s) by omitting from section ninety-one the words "two pounds" and by inserting in lieu thereof the words "four pounds"; Sec 91.
(Party requiring jury to make deposit.)
- (t) by omitting subsections one and two of section one hundred and by inserting in lieu thereof the following subsection:— Sec. 100.
(Judgment payable by instalments)
- (1) Where any judgment for a plaintiff or defendant has been given or entered up in a District Court the judge may at any time order the same to be paid at such time or times and by such instalments, if any, as he thinks fit.
- (u)

District Courts (Amendment).

Substituted
sec. 101.

- (u) by omitting section one hundred and one and by inserting in lieu thereof the following section:—

Judgment
against
some only
of
defendants.

101. Where in any action in a District Court for a debt or liquidated demand, judgment by default or confession is entered up against one or more of several defendants, the plaintiff may enforce such judgment without prejudice to his right to proceed against, and to enforce any judgment obtained against, any other defendant or defendants, except in so far as satisfaction by any defendant operates in favour of all.

New sec.
103A.

- (v) by inserting next after section one hundred and three the following new section:—

Set-off of
judgments.

103A. (1) Any judgment debtor in a District Court (in this section referred to as “the first court”) who has obtained judgment against his judgment creditor in some other District Court (in this section referred to as “the second court”) may make application to the judge of the first court for an order that the judgment against him be set off against the judgment in his favour.

(2) Where any such order has been made, and—

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

- (b) the amount of the judgment in the first court is greater than the amount of the judgment in the second court, the amount of the judgment in the first court shall be reduced by the amount
of

District Courts (Amendment).

of the judgment in the second court, and the judgment in the second court shall be deemed to be satisfied.

- (w) by inserting in section one hundred and four after the word "may" the words "except where otherwise directed by the judge"; Sec. 104.
(Judgment payable by instalments.)
- (x) by omitting from section one hundred and five the words "six years" and by inserting in lieu thereof the words "twenty years"; Sec. 105.
(Execution in twenty years without revival.)
- (y) (i) by omitting from subsection one of section one hundred and ten the words "by the said registrar, by himself or his deputy" and by inserting in lieu thereof the words "pursuant to this Act"; Sec. 110.
(Registrar to execute deed of sale.)
- (ii) by omitting from the same subsection the word "said" where secondly occurring;
- (iii) by omitting from the same section the words "bargain and sale" wherever occurring and by inserting in lieu thereof the word "assurance";
- (z) by omitting the proviso to section one hundred and twelve and by inserting in lieu thereof the following proviso:— Sec. 112.
(Bailiff to seize personal property.)

Provided that—

- (a) wearing apparel;
- (b) bedding;
- (c) tools; and
- (d) implements of trade;

of the said person and his family, to the value of ten pounds in respect of each such class of goods shall be protected from seizure.

(bb)

(aa)

District Courts (Amendment).

Sec. 113.

(When goods seized under process of District Courts landlord may claim rent in arrears.)

(aa) by omitting section one hundred and thirteen;

Sec. 116.

(Examination of debtor, when judgment, etc., for recovery of money.)

(bb) (i) by inserting in subsection one of section one hundred and sixteen after the word "registrar" where secondly occurring the words "or the judge or registrar of the court of the district in which the judgment debtor resides";

(ii) by omitting subsection three of the same section;

New sec. 120A.

(cc) by inserting next after section one hundred and twenty the following new section:—

Lien or claim of third person on debt.

120A. (1) Whenever in any proceedings in a District Court to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt.

(2) After hearing the allegations of any third person under any such order as mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the judge to appear, or in case of such third person not appearing when ordered, the judge may order execution to issue as provided in section one hundred and nineteen of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable.

(dd)

District Courts (Amendment).

- (dd) by inserting next after section one hundred and twenty-five the following new section:—

New sec.
125A.

125A. For the purposes of this Division of this Part of this Act “judgment” includes any order for the payment of a sum of money whether as costs or otherwise.

Definition
of “judg-
ment.”

- (ee) (i) by omitting from section one under the matter relating to Part II the words and figures “Division 4.—Time and place for holding court—s. 32” and by inserting in lieu thereof the following words and figures “Division 4.—Adjournment of court—s. 32”;

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

- (ii) by omitting from the same section the symbols “125” and by inserting in lieu thereof the symbols “125A”;

3. The Principal Act is further amended—

Further
amendment
of Act No.
23, 1912.

- (a) (i) by omitting from subsection one of section forty-one the words “four hundred pounds” and by inserting in lieu thereof the words “one thousand pounds”;

Sec. 41.
(Ordinary
jurisdiction
of the
courts.)

- (ii) by omitting subsection two of the same section;

- (b) by omitting from section forty-two the words “four hundred pounds” and by inserting in lieu thereof the words “one thousand pounds”;

Sec. 42.
(Jurisdiction
in cases of
partnership,
intestacy
and legacy.)

- (c) by omitting from section fifty-five the words “four hundred pounds” wherever occurring and by inserting in lieu thereof the words “one thousand pounds”;

Sec. 55.
(Splitting
debt by
giving
bills, etc.)

- (d) by omitting from section fifty-seven the words “four hundred pounds” and by inserting in lieu thereof the words “one thousand pounds”;

Sec. 57.
(Infants.)

(e)

District Courts (Amendment).

Sec. 58.
(Actions by
physicians,
etc.)

Further
amendment
of Act No. 23,
1912.

New
Part IIIA.

(e) by omitting section fifty-eight.

4. The Principal Act is further amended—

(a) by inserting next after section one hundred and thirty-one the following new Part:—

PART IIIA.

JURISDICTION IN EQUITY.

Jurisdic-
tion in
equity.
cf. 24 and
25, Geo. V,
c. 53, ss.
52, etc.

131A. (1) A District Court shall have and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say—

- (a) for foreclosure or redemption of any mortgage or for enforcing any charge or lien where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds;
- (b) for specific performance of or for the rectification, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds;
- (c) applications for an order under section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, where the amount claimed does not exceed the sum of five hundred pounds;
- (d) actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds;

(e)

District Courts (Amendment).

- (e) for the execution of any trust or for a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the sum of five hundred pounds;
- (f) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the sum of five hundred pounds.

(2) In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of the Chief Judge in Equity, and the registrar and bailiff respectively shall in all such actions or matters discharge any duties which an officer of the Supreme Court can discharge, either under the order of the said Chief Judge in Equity or under the practice of the Supreme Court in Equity, and all officers of the District Courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

(3) If during the progress of any action or matter under subsection one of this section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct the action or matter to be transferred to the Supreme Court in its equitable jurisdiction, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts:

Provided always, that it shall be lawful for any party to apply to the Chief Judge in Equity at chambers for an order authorising and directing the action or matter to be carried on
and

District Courts (Amendment).

and prosecuted in the District Court, notwithstanding such excess in the amount or value of the limit to which equitable jurisdiction is given by subsection one of this section; and the Chief Judge in Equity, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

(4) Where any action or matter is pending in the Supreme Court in its equitable jurisdiction which might have been commenced in a District Court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the Chief Judge in Equity to have the same transferred to the District Court in which the same might have been commenced, and the Chief Judge in Equity shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the District Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such District Court.

(5) If during the progress of any action or matter under subsection one of this section (not being an action or matter transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be transferred to the Supreme Court in its equitable jurisdiction, then without prejudice to the validity of any order already made the judge may direct the action or matter to be transferred accordingly, and the whole of the procedure in the said action or matter when so transferred

District Courts (Amendment).

transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts.

- (b) by inserting next after subsection one of section seven the following new subsection:—

Sec. 7.
(Jurisdiction: in equity.)

(1A) Notwithstanding the provisions of subsection one of this section—

- (a) proceedings which relate to the foreclosure, redemption, recovery or sale of any mortgage, charge, or lien on any lands, tenements, or hereditaments, shall be taken in the court for the district within which the lands, tenements, or hereditaments, or any part thereof, are situated;

- (b) proceedings under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, pursuant to paragraph (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:

Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other District Court it shall be competent for the court to transfer the same to such other court, and thereupon the proceedings shall be taken in such other court and the provisions of section ten of this Act shall, mutatis mutandis, apply thereto.

(c)

District Courts (Amendment).

Sec. 142.
(Appeal.)

- (c) by inserting after paragraph (d) of section one hundred and forty-two the following word and new paragraph—

“or

- (e) in any action or matter taken pursuant to Part IIIA of this Act in which the amount in issue exceeds ten pounds”;

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

- (d) by inserting in section one after the matter relating to Part III the following new matter:—

PART IIIA.—JURISDICTION IN EQUITY—s.
131A.

5. The Principal Act is further amended:—

Further
amendment of
Act No. 23,
1912.

Sec. 140.
(Actions of
tort in
Supreme
Court may be
remitted to
District
Court.)

- (a) by omitting section one hundred and forty;

Sec. 141.
(When action
remitted to
District
Court
plaintiff to
lodge
original
writ.)
(Consequen-
tial.)

- (b) by omitting from section one hundred and forty-one the words “under either of the two last preceding sections” and by inserting in lieu thereof the words “under section one hundred and thirty-nine of this Act”;

Substituted
sec. 145.

- (c) by omitting section one hundred and forty-five and by inserting in lieu thereof the following section:—

When
appeal to
operate as
stay of
proceedings,
security for
costs and
power of
Supreme
Court on
appeal.

145. (1) Except as provided in this section an appeal shall not operate as a stay of proceedings.

(2) (a) A judge of the District Court, on application made within the prescribed time, may order that proceedings shall be stayed during the period within which an appeal may be brought.

(b)

District Courts (Amendment).

(b) If, within such period, an appeal is brought and—

(i) when such order is made on the application of the plaintiff, security is given to the satisfaction of the registrar of the District Court for such amount in respect of the defendant's costs of the action as may be assessed by the registrar; or

(ii) when such order is made on the application of the defendant, security is given to the satisfaction of the registrar of the District Court for the amount of the verdict and such amount in respect of the plaintiff's costs of the action as may be assessed by the registrar;

such stay shall continue until the appeal is disposed of or until a judge of the District Court otherwise orders.

(3) In any appeal the Supreme Court may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party, and make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

(d) by omitting from section one hundred and forty-eight the words "six years" wherever appearing, and by inserting in lieu thereof the words "one year";

Sec. 148.
(Unclaimed
moneys.)

(e) by omitting section one hundred and forty-nine and by inserting in lieu thereof the following sections:—

Substituted
sec. 149, and
new secs.
150-152.

149. (1) In any case not expressly provided for by this Act or by rules of court made thereunder, the practice and procedure for the time being of the Supreme Court shall be adopted as far as practicable.

Procedure
of District
Court in
certain
cases.

District Courts (Amendment).

(2) Nothing in this section shall affect the powers of a judge of the District Court under section nineteen of the Administration of Justice Act, 1924, as amended by subsequent Acts.

Appeals
under any
Act to
District
Court.

150. Where by or under any Act or Commonwealth Act a right of appeal to a District Court is conferred, then, unless the contrary intention appears, such appeal shall be heard and disposed of by a judge sitting without a jury.

Judges to
meet
regularly
and make
recommen-
dations.
cf. 1935,
No. 2253
(S.A.), s.
16.

151. The District Court judges shall—

(a) assemble once at least every six months for the purpose of considering the operation of this Act and the rules of court for the time being in force, and also the working of the several District Court offices, and the arrangements relative to the duties of the officers of the District Courts, and of enquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said courts, and

(b) report, once at least every six months, to the Attorney-General what (if any) amendments it would, in their judgment, be expedient to make in this Act, or in the rules of court, or otherwise relating to the administration of justice in District Courts, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice in District Courts.

Rules of
court.

152. (1) The District Court judges or a majority of them shall have power, by rules of court, not inconsistent with this Act, to prescribe

all

District Courts (Amendment).

all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and to revoke, amend or vary any such rules of court.

(2) Without limiting the generality of the foregoing power rules of court may be made with regard to District Courts for and in respect of—

- (a) the practice of the courts and the forms of proceedings therein;
- (b) the scales of fees and costs to be paid to barristers and attorneys;
- (c) the expenses to be paid to witnesses;
- (d) the court fees payable in any proceedings under this Act relating to the examination of judgment debtors or the attachment of debts;
- (e) the keeping of all books, entries, and accounts required to be kept by the registrars and bailiffs;
- (f) the alteration of the number of days by or under this Act limited for any purpose and the substitution of other days therefor;
- (g) the regulation of the manner in which applications or appeals to a court or judge under any statute may be made, and the practice and procedure to be observed upon any such application or appeal.

(3) All rules of court so made shall—

- (a) after approval by the Attorney-General, be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such rules; and

(c)

District Courts (Amendment).

- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

- (4) Non-compliance with any of the rules of court shall not render any proceeding void unless a judge so directs, but any such proceeding may be set aside, either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to the judge to be just.

- (5) The general rules made under this Act and in force at the commencement of the District Courts (Amendment) Act, 1949, shall continue in force and have the same force and effect as if the same were rules of court made under this section.

Sec. 3.
(Consequential.)

- (f) by omitting from section three the words "general rules" and by inserting in lieu thereof the words "rules of court";

Sec. 64.
(Consequential.)

- (g) by omitting from section sixty-four the words "by general rules made under this Act";

Sec. 1.
(Division into Parts.)
(Consequential.)

- (h) by omitting from section one the symbols "149" and by inserting in lieu thereof the symbols "152."

District Courts (Amendment).

6. (1) The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new section:—

Further amendment of Act No. 23, 1912. New sec. 133A.

133A. (1) The questions of fact arising in any suit under the Matrimonial Causes Act 1899, as amended by subsequent Acts, where—

Questions of fact in undefended matrimonial cases triable in certain cases in District Courts.

(a) no appearance has been entered; and

(b) the registered office of the solicitor for the petitioner is situated outside the County of Cumberland,

shall, unless cause to the contrary be shown, be reduced into writing and remitted by the Supreme Court to be tried by a judge of a District Court without a jury.

(2) The powers of the Supreme Court under this section shall be exercised by the registrar of the matrimonial causes jurisdiction or other officer of the said court settling the issues, in private chambers, without any motion being filed or moved.

(3) At the time of settling the issues, such registrar or other officer shall endorse thereon the District Court at which the trial is to be had, the date of sitting of such court, the fact that the trial is to be without a jury, and such other matter as may to him appear proper for fixing the time, place and mode of trial, and the return of the findings.

(4) The endorsement so made shall have the like effect as an order of the Supreme Court.

(5) The judge of the District Court presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

(6) The provisions of this section shall not apply to any suit—

(a) for restitution of conjugal rights;

(b) in which damages are claimed;

(c)

District Courts (Amendment).

- (c) in which it appears on the record that the petitioner has committed adultery; or
- (d) in which jurisdiction is derived from the Matrimonial Causes Act 1945 of the Parliament of the Commonwealth of Australia.

Amendment of
Act No. 14,
1899. New
sec. 93A.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after section ninety-three the following new section:—

Decrees in
certain
cases to be
pronounced
by registrar.

93A. Where questions of fact in any suit have been remitted for trial pursuant to section 133A of the District Courts Act, 1912-1949, the power, authority and jurisdiction of the Supreme Court to pronounce a decree in, or to dismiss, such suit, and all powers, authorities and jurisdiction incidental thereto (including matters relating to costs, custody and access) shall be exercisable by the registrar or any deputy registrar.

(3) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1949.

By Authority:

ALFRED HENRY PETTIFER, Government Printer, Sydney, 1950.

[9d.]

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.

H. ROBBINS,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 9 November, 1949.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. 44, 1949.

An Act to make further provision as to the jurisdiction of District Courts; to confer an equitable jurisdiction upon such courts; for these and other purposes to amend the District Courts Act, 1912-1947, and the Matrimonial Causes Act 1899, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 16th November, 1949.]

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

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1949."

(2)

Short title,
citation and
commence-
ment.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

District Courts (Amendment).

(2) The District Courts Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may be cited as the District Courts Act, 1912-1949.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
23, 1912.

Sec. 4.
(Appoint-
ment of
District
Courts.)

2. The Principal Act is amended—

- (a) by omitting subsection one of section four and by inserting in lieu thereof the following new subsection:—

(1) The Governor may, by proclamation in the Gazette, order that courts, to be called District Courts, shall be holden at such towns and places and at such times as he thinks fit and may, in like manner, alter the place or time for holding any such court, or order that the holding of any such court be discontinued.

Sec. 5.
(Creation of
district.)

- (b) by omitting subsection two of section five and by inserting in lieu thereof the following subsection:—

(2) Any such proclamation shall take effect from the date of notification thereof in the Gazette or from such later date as may be specified therein.

Sec. 7.
(Juris-
diction:
claims
under £10.)

- (c) (i) by omitting from subsection two of section seven the words "at present";
(ii) by omitting from the same subsection the words "so long as such jurisdiction as last aforesaid continues";

Substituted
sec. 10.

- (d) by omitting section ten and by inserting in lieu thereof the following section:—

Change of
venue.

10. (1) In any action or matter pending in any District Court—

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

(b)

District Courts (Amendment).

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

the judge may change the venue and direct the trial or hearing to be had in some other District Court, and may for that purpose make all such orders, and (where the venue is changed at the instance of any party) impose such terms and conditions, as justice appears to require.

(2) Where the venue is changed the registrar of the District Court in which the action or matter was commenced shall forthwith transmit by post the whole record thereof to the registrar of the District Court to which the action or matter is to be sent.

(3) The judge and registrar of such last-mentioned District Court shall have the same jurisdiction and powers in respect of such action or matter as if it had been commenced in that District Court, and all further proceedings in the action or matter shall be had as if it had been so commenced.

(4) Where the venue of an action or matter is changed to another District Court, the judge of that District Court shall appoint a day for the hearing, notice whereof shall be sent by the registrar by post or otherwise to the parties.

(e) by inserting at the end of subsection one of section fourteen the words "Such judge as the Governor determines shall be Chairman of the District Court Judges";

Sec. 14.
(Appoint-
ment and
qualification
of judges.)

(f) by omitting section fifteen and by inserting in lieu thereof the following section:—

Substituted
sec. 15.

15. Each District Court judge is constituted a judge of every District Court and chairman of every court of quarter sessions in New South Wales, and each such judge or chairman, as the case may be, shall exercise jurisdiction in such district or districts as the Minister shall from time

Judges
appointed
for New
South
Wales.

District Courts (Amendment).

time to time appoint in respect of such judge or chairman.

Sec. 16.
(Two or more judges appointed in same district.)

- (g) by omitting subsection two of section sixteen and by inserting in lieu thereof the following subsections:—

(2) Where two or more District Court judges are appointed to exercise jurisdiction in one and the same district, only one of such judges shall sit, preside or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers and in the discharge of other administrative duties imposed by this Act upon the judge of any District Court, the concurrence of such number of judges as may be prescribed in respect of that district shall be required.

(2A) Subject to the provisions of this Act, sittings of the District Courts shall be arranged by the Chairman of the District Court judges.

Secs. 21-23.
(Registrars.)

- (h) by omitting sections twenty-one, twenty-two and twenty-three and by inserting in lieu thereof the following section:—

Registrars.

21. (1) There shall be a registrar for every District Court.

(2) (a) In the case of the District Court of the Metropolitan District holden at Sydney the registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed registrar of such court under the provisions of this paragraph.

(b) In every other case the registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at the place at which the court is situated.

(i)

District Courts (Amendment).

- (i) by omitting from section twenty-four the words Sec. 24.
 "The Governor may appoint an assistant (Assistant
 registrar to act at any place" and by inserting registrar.)
 in lieu thereof the following paragraphs:—

The Governor may, from time to time, appoint places at which the powers and duties herein-after mentioned may be exercised by an assistant registrar. The places at which an assistant registrar acted immediately before the commencement of the District Courts (Amendment) Act, 1949, shall be deemed to be places appointed by the Governor pursuant to the foregoing provisions of this section.

In the case of the District Court of the Metropolitan District holden at Sydney the assistant registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed assistant registrar of such court under the provisions of this section.

In every other case at each place appointed by the Governor pursuant to the provisions of this section the assistant registrar shall be the person for the time being holding office as, or discharging the functions of, clerk of petty sessions at such place.

- (j) (i) by omitting from subsection one of section Sec. 30.
 thirty the words "or partner of such (Disabilities
 registrar"; of registrar
and bailiff.)
- (ii) by omitting from the same subsection the words "or partner" wherever occurring;
- (iii) by omitting from the same subsection the words "by himself or his partner";

- (k) by omitting section thirty-one;

Sec. 31.
(Registrar and
bailiff to give
security.)

(1)

District Courts (Amendment).

Division 4.
(Time and
place for
holding
court.)

- (1) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division:—

DIVISION 4.—Adjournment of court.

Adjourn-
ment of
court.

32. Where for any reason it is not practicable for a sitting of a District Court to take place on the date appointed therefor, the registrar, or in the event of his death or absence the bailiff, shall adjourn the court to such hour or such later date as he may deem convenient.

Sec. 35.
(Court fees
to be denoted
by stamps.)
New sec.
52A.

- (m) by omitting section thirty-five;

(n) by inserting next after section fifty-two the following new section:—

Consolida-
tion of
trials.

52A. Actions or matters pending or arising in any District Court between the same parties may be consolidated by order of a judge, upon such terms as he thinks just and reasonable.

Sec. 67.
(Judgment
in default of
defence.)

- (o) (i) by omitting from section sixty-seven the words “seven days” and by inserting in lieu thereof the words “the prescribed number of days”;

(ii) by omitting from the same section the words “ten days” and by inserting in lieu thereof the words “the prescribed number of days”;

(iii) by inserting at the end of the same section the words “For the purposes of this section rules of court may prescribe numbers of days varying according to whether the defendant is served within or outside the district for which such court is constituted and in the latter case varying according to the distance of the place where the defendant is served from such court”;

Sec. 68.
(Defence
lodged after
time.)

- (p) by omitting from section sixty-eight the words “mentioned in the last preceding section” and by inserting in lieu thereof the words “prescribed pursuant to section sixty-seven of this Act”;

(q).

District Courts (Amendment).

- (q) (i) by omitting from section seventy-three the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (ii) by inserting at the end of the same section the following new proviso:—
- Provided further that where the matter the subject of such set-off or cross action involves an amount in excess of one thousand pounds, the defendant may abandon the excess, which abandonment shall be notified to the plaintiff in the manner prescribed, and may pursue the matter the subject of such set-off or cross action to an amount not exceeding one thousand pounds.
- (r) (i) by inserting next after paragraph (d) of subsection one of section seventy-five the following new paragraph:—
- (e) be allowed to raise such other defence or defences as may be prescribed by rules of court;
- (ii) (a) by omitting from subsection two of the same section the word "hereafter";
- (b) by omitting from the same subsection the words "at present";
- (s) by omitting from section ninety-one the words "two pounds" and by inserting in lieu thereof the words "four pounds";
- (t) by omitting subsections one and two of section one hundred and by inserting in lieu thereof the following subsection:—
- (1) Where any judgment for a plaintiff or defendant has been given or entered up in a District Court the judge may at any time order the same to be paid at such time or times and by such instalments, if any, as he thinks fit.
- (u)

Sec. 73.
(Proceedings where defendant's set-off or cross action exceeds the plaintiff's claim.)

Sec. 75.
(Notice of equitable and special defence.)

Sec 91.
(Party requiring jury to make deposit.)

Sec. 100.
(Judgment payable by instalments.)

District Courts (Amendment).

Substituted
sec. 101.

- (u) by omitting section one hundred and one and by inserting in lieu thereof the following section:—

Judgment
against
some only
of
defendants.

101. Where in any action in a District Court for a debt or liquidated demand, judgment by default or confession is entered up against one or more of several defendants, the plaintiff may enforce such judgment without prejudice to his right to proceed against, and to enforce any judgment obtained against, any other defendant or defendants, except in so far as satisfaction by any defendant operates in favour of all.

New sec.
103A.

- (v) by inserting next after section one hundred and three the following new section:—

Set-off of
judgments.

103A. (1) Any judgment debtor in a District Court (in this section referred to as "the first court") who has obtained judgment against his judgment creditor in some other District Court (in this section referred to as "the second court") may make application to the judge of the first court for an order that the judgment against him be set off against the judgment in his favour.

(2) Where any such order has been made, and—

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

District Courts (Amendment).

of the judgment in the second court, and the judgment in the second court shall be deemed to be satisfied.

(w) by inserting in section one hundred and four after the word "may" the words "except where otherwise directed by the judge";

Sec. 104.
(Judgment payable by instalments.)

(x) by omitting from section one hundred and five the words "six years" and by inserting in lieu thereof the words "twenty years";

Sec. 105.
(Execution in twenty years without revival.)

(y) (i) by omitting from subsection one of section one hundred and ten the words "by the said registrar, by himself or his deputy" and by inserting in lieu thereof the words "pursuant to this Act";

Sec. 110.
(Registrar to execute deed of sale.)

(ii) by omitting from the same subsection the word "said" where secondly occurring;

(iii) by omitting from the same section the words "bargain and sale" wherever occurring and by inserting in lieu thereof the word "assurance";

(z) by omitting the proviso to section one hundred and twelve and by inserting in lieu thereof the following proviso:—

Sec. 112.
(Bailiff to seize personal property.)

Provided that—

- (a) wearing apparel;
- (b) bedding;
- (c) tools; and
- (d) implements of trade;

of the said person and his family, to the value of ten pounds in respect of each such class of goods shall be protected from seizure.

(aa)

District Courts (Amendment).

Sec. 113.
(When goods
seized under
process of
District
Courts
landlord may
claim cer-
tain rent in
arrears.)

Sec. 116.
(Examination
of debtor,
when judg-
ment, etc.,
for recovery
of money.)

New sec.
120A.

Lien or
claim of
third person
on debt.

(aa) by omitting section one hundred and thirteen;

(bb) (i) by inserting in subsection one of section one hundred and sixteen after the word "registrar" where secondly occurring the words "or the judge or registrar of the court of the district in which the judgment debtor resides";

(ii) by omitting subsection three of the same section;

(cc) by inserting next after section one hundred and twenty the following new section:—

120A. (1) Whenever in any proceedings in a District Court to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt.

(2) After hearing the allegations of any third person under any such order as mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the judge to appear, or in case of such third person not appearing when ordered, the judge may order execution to issue as provided in section one hundred and nineteen of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable.

(dd)

District Courts (Amendment).

- (dd) by inserting next after section one hundred and twenty-five the following new section:—

New sec.
125A.

125A. For the purposes of this Division of this Part of this Act "judgment" includes any order for the payment of a sum of money whether as costs or otherwise.

Definition
of "judg-
ment."

- (ee) (i) by omitting from section one under the matter relating to Part II the words and figures "Division 4.—Time and place for holding court—s. 32" and by inserting in lieu thereof the following words and figures "Division 4.—Adjournment of court—s. 32";
- (ii) by omitting from the same section the symbols "125" and by inserting in lieu thereof the symbols "125A";

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

3. The Principal Act is further amended—

Further
amendment
of Act No.
23, 1912.

- (a) (i) by omitting from subsection one of section forty-one the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (ii) by omitting subsection two of the same section;
- (b) by omitting from section forty-two the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (c) by omitting from section fifty-five the words "four hundred pounds" wherever occurring and by inserting in lieu thereof the words "one thousand pounds";
- (d) by omitting from section fifty-seven the words "four hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (e)

Sec. 41.
(Ordinary
jurisdiction
of the
courts.)

Sec. 42.
(Jurisdiction
in cases of
partnership,
intestacy
and legacy.)

Sec. 55.
(Splitting
debt by
giving
bills, etc.)

Sec. 57.
(Infants.)

District Courts (Amendment).

Sec. 58.
(Actions by
physicians,
etc.)

Further
amendment
of Act No. 23,
1912.

New
Part IIIA.

(e) by omitting section fifty-eight.

4. The Principal Act is further amended—

(a) by inserting next after section one hundred and thirty-one the following new Part:—

PART IIIA.

JURISDICTION IN EQUITY.

Jurisdic-
tion in
equity.
cf. 24 and
25, Geo. V,
c. 53, ss.
52, etc.

131A. (1) A District Court shall have and exercise all the powers and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say—

- (a) for foreclosure or redemption of any mortgage or for enforcing any charge or lien where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds;
- (b) for specific performance of or for the rectification, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds;
- (c) applications for an order under section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, where the amount claimed does not exceed the sum of five hundred pounds;
- (d) actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds;

(e)

District Courts (Amendment).

- (e) for the execution of any trust or for a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the sum of five hundred pounds;
- (f) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the sum of five hundred pounds.

(2) In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of the Chief Judge in Equity, and the registrar and bailiff respectively shall in all such actions or matters discharge any duties which an officer of the Supreme Court can discharge, either under the order of the said Chief Judge in Equity or under the practice of the Supreme Court in Equity, and all officers of the District Courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

(3) If during the progress of any action or matter under subsection one of this section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct the action or matter to be transferred to the Supreme Court in its equitable jurisdiction, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts:

Provided always, that it shall be lawful for any party to apply to the Chief Judge in Equity at chambers for an order authorising and directing the action or matter to be carried on
and

District Courts (Amendment).

and prosecuted in the District Court, notwithstanding such excess in the amount or value of the limit to which equitable jurisdiction is given by subsection one of this section; and the Chief Judge in Equity, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

(4) Where any action or matter is pending in the Supreme Court in its equitable jurisdiction which might have been commenced in a District Court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the Chief Judge in Equity to have the same transferred to the District Court in which the same might have been commenced, and the Chief Judge in Equity shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the District Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such District Court.

(5) If during the progress of any action or matter under subsection one of this section (not being an action or matter transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be transferred to the Supreme Court in its equitable jurisdiction, then without prejudice to the validity of any order already made the judge may direct the action or matter to be transferred accordingly, and the whole of the procedure in the said action or matter when so transferred

District Courts (Amendment).

transferred shall be regulated by the rules of the Supreme Court made under the Equity Act, 1901, as amended by subsequent Acts.

- (b) by inserting next after subsection one of section seven the following new subsection:—
- (1A) Notwithstanding the provisions of subsection one of this section—

Sec. 7.
(Jurisdiction: in equity.)

- (a) proceedings which relate to the foreclosure, redemption, recovery or sale of any mortgage, charge, or lien on any lands, tenements, or hereditaments, shall be taken in the court for the district within which the lands, tenements, or hereditaments, or any part thereof, are situated;
- (b) proceedings under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, pursuant to paragraph (c) of subsection one of section 131A of this Act and proceedings pursuant to paragraph (f) of subsection one of section 131A of this Act shall be taken in the court for the district within which the deceased person had his last place of abode in New South Wales, or within which the executors or administrators, or any one of them, shall have their or his place of abode:

Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other District Court it shall be competent for the court to transfer the same to such other court, and thereupon the proceedings shall be taken in such other court and the provisions of section ten of this Act shall, mutatis mutandis, apply thereto.

(c)

District Courts (Amendment).

Sec. 142.
(Appeal.)

- (c) by inserting after paragraph (d) of section one hundred and forty-two the following word and new paragraph—

“or

- (e) in any action or matter taken pursuant to Part IIIA of this Act in which the amount in issue exceeds ten pounds”;

Sec. 1.
(Division
into Parts.)
(Consequen-
tial.)

- (d) by inserting in section one after the matter relating to Part III the following new matter:—

PART IIIA.—JURISDICTION IN EQUITY—S.
131A.

5. The Principal Act is further amended:—

Further
amendment of
Act No. 23,
1912.

Sec. 140.
(Actions of
tort in
Supreme
Court may be
remitted to
District
Court.)

- (a) by omitting section one hundred and forty;

Sec. 141.
(When action
remitted to
District
Court
plaintiff to
lodge
original
writ.)
(Consequen-
tial.)

- (b) by omitting from section one hundred and forty-one the words “under either of the two last preceding sections” and by inserting in lieu thereof the words “under section one hundred and thirty-nine of this Act”;

Substituted
sec. 145.

- (c) by omitting section one hundred and forty-five and by inserting in lieu thereof the following section:—

145. (1) Except as provided in this section an appeal shall not operate as a stay of proceedings.

(2) (a) A judge of the District Court, on application made within the prescribed time, may order that proceedings shall be stayed during the period within which an appeal may be brought.

(b)

When
appeal to
operate as
stay of
proceedings,
security for
costs and
power of
Supreme
Court on
appeal.

District Courts (Amendment).

(b) If, within such period, an appeal is brought and—

- (i) when such order is made on the application of the plaintiff, security is given to the satisfaction of the registrar of the District Court for such amount in respect of the defendant's costs of the action as may be assessed by the registrar; or
- (ii) when such order is made on the application of the defendant, security is given to the satisfaction of the registrar of the District Court for the amount of the verdict and such amount in respect of the plaintiff's costs of the action as may be assessed by the registrar;

such stay shall continue until the appeal is disposed of or until a judge of the District Court otherwise orders.

(3) In any appeal the Supreme Court may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party, and make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

- (d) by omitting from section one hundred and forty-eight the words "six years" wherever appearing, and by inserting in lieu thereof the words "one year"; Sec. 148.
(Unclaimed moneys.)
- (e) by omitting section one hundred and forty-nine and by inserting in lieu thereof the following sections:— Substituted
sec. 149, and
new secs.
150-152.

149. (1) In any case not expressly provided for by this Act or by rules of court made thereunder, the practice and procedure for the time being of the Supreme Court shall be adopted as far as practicable. Procedure
of District
Court in
certain
cases.

(2)

District Courts (Amendment).

(2) Nothing in this section shall affect the powers of a judge of the District Court under section nineteen of the Administration of Justice Act, 1924, as amended by subsequent Acts.

Appeals
under any
Act to
District
Court.

150. Where by or under any Act or Commonwealth Act a right of appeal to a District Court is conferred, then, unless the contrary intention appears, such appeal shall be heard and disposed of by a judge sitting without a jury.

Judges to
meet
regularly
and make
recommen-
dations.
cf. 1935,
No. 2253
(S.A.), s.
16.

151. The District Court judges shall—

- (a) assemble once at least every six months for the purpose of considering the operation of this Act and the rules of court for the time being in force, and also the working of the several District Court offices, and the arrangements relative to the duties of the officers of the District Courts, and of enquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said courts, and
- (b) report, once at least every six months, to the Attorney-General what (if any) amendments it would, in their judgment, be expedient to make in this Act, or in the rules of court, or otherwise relating to the administration of justice in District Courts, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice in District Courts.

Rules of
court.

152. (1) The District Court judges or a majority of them shall have power, by rules of court, not inconsistent with this Act, to prescribe
all

District Courts (Amendment).

all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and to revoke, amend or vary any such rules of court.

(2) Without limiting the generality of the foregoing power rules of court may be made with regard to District Courts for and in respect of—

- (a) the practice of the courts and the forms of proceedings therein;
- (b) the scales of fees and costs to be paid to barristers and attorneys;
- (c) the expenses to be paid to witnesses;
- (d) the court fees payable in any proceedings under this Act relating to the examination of judgment debtors or the attachment of debts;
- (e) the keeping of all books, entries, and accounts required to be kept by the registrars and bailiffs;
- (f) the alteration of the number of days by or under this Act limited for any purpose and the substitution of other days therefor;
- (g) the regulation of the manner in which applications or appeals to a court or judge under any statute may be made, and the practice and procedure to be observed upon any such application or appeal.

(3) All rules of court so made shall—

- (a) after approval by the Attorney-General, be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such rules; and

(c)

District Courts (Amendment).

- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

(4) Non-compliance with any of the rules of court shall not render any proceeding void unless a judge so directs, but any such proceeding may be set aside, either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to the judge to be just.

(5) The general rules made under this Act and in force at the commencement of the District Courts (Amendment) Act, 1949, shall continue in force and have the same force and effect as if the same were rules of court made under this section.

Sec. 3.
(Consequential.)

- (f) by omitting from section three the words "general rules" and by inserting in lieu thereof the words "rules of court";

Sec. 64.
(Consequential.)

- (g) by omitting from section sixty-four the words "by general rules made under this Act";

Sec. 1.
(Division into Parts.)
(Consequential.)

- (h) by omitting from section one the symbols "149" and by inserting in lieu thereof the symbols "152."

District Courts (Amendment).

6. (1) The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new section:—

Further amendment of Act No. 23, 1912. New sec. 133A.

133A. (1) The questions of fact arising in any suit under the Matrimonial Causes Act 1899, as amended by subsequent Acts, where—

Questions of fact in undefended matrimonial cases triable in certain cases in District Courts.

(a) no appearance has been entered; and

(b) the registered office of the solicitor for the petitioner is situated outside the County of Cumberland,

shall, unless cause to the contrary be shown, be reduced into writing and remitted by the Supreme Court to be tried by a judge of a District Court without a jury.

(2) The powers of the Supreme Court under this section shall be exercised by the registrar of the matrimonial causes jurisdiction or other officer of the said court settling the issues, in private chambers, without any motion being filed or moved.

(3) At the time of settling the issues, such registrar or other officer shall endorse thereon the District Court at which the trial is to be had, the date of sitting of such court, the fact that the trial is to be without a jury, and such other matter as may to him appear proper for fixing the time, place and mode of trial, and the return of the findings.

(4) The endorsement so made shall have the like effect as an order of the Supreme Court.

(5) The judge of the District Court presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

(6) The provisions of this section shall not apply to any suit—

(a) for restitution of conjugal rights;

(b) in which damages are claimed;

(c)

District Courts (Amendment).

- (c) in which it appears on the record that the petitioner has committed adultery; or
- (d) in which jurisdiction is derived from the Matrimonial Causes Act 1945 of the Parliament of the Commonwealth of Australia.

Amendment of
Act No. 14,
1899. New
sec. 93A.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after section ninety-three the following new section:—

Decrees in
certain
cases to be
pronounced
by registrar.

93A. Where questions of fact in any suit have been remitted for trial pursuant to section 133A of the District Courts Act, 1912-1949, the power, authority and jurisdiction of the Supreme Court to pronounce a decree in, or to dismiss, such suit, and all powers, authorities and jurisdiction incidental thereto (including matters relating to costs, custody and access) shall be exercisable by the registrar or any deputy registrar.

(3) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1949.

In the name and on behalf of His Majesty I assent to this Act.

J. NORTHCOTT,
Governor.

*Government House,
Sydney, 16th November, 1949.*

