

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 November, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1974.

An Act to increase the amount for which certain actions may be brought in the District Court; to make further provisions with respect to the practice and procedure of the District Court and the powers of the Supreme Court on appeals from the District Court; for these and other purposes to amend the District Court Act, 1973, the Supreme Court Act, 1970, and the Criminal Appeal Act, 1912; to validate certain matters; and for purposes connected therewith.

BE

District Court (Amendment).

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

1. This Act may be cited as the "District Court Short title.
(Amendment) Act, 1974".

2. (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

10 (2) Except as provided in subsection (1), the several
provisions of this Act shall commence on such day or days
as may be appointed by the Governor in respect thereof and
as may be notified by proclamation published in the Gazette.

3. The District Court Act, 1973, is amended—

Amendment
of Act No.
9, 1973.

15 (a) by omitting from section 30 the matter "\$200" and
by inserting instead the matter "\$500"; Sec. 30.
(Obstructing
bailiffs.)

20 (b) (i) by inserting after section 32 (2) the following
subsection:—
(2A) The Chief Judge may, if in his opinion
it is expedient to do so, by order in writing,
direct that the Court shall, during a specified
year, sit in its civil jurisdiction at a specified
proclaimed place at specified times.

25 (ii) by inserting in section 32 (3) after the matter
"(2)" the matter "or (2A)";

(iii) by omitting section 32 (3) (a);

(iv)

District Court (Amendment).

(iv) by inserting in section 32 (4) after the matter “(2)” the matter “, (2A)”;

(v) by inserting in section 32 (5) after the matter “(2)” the matter “or (2A)”;

5 (vi) by omitting section 32 (5) (a);

(vii) by inserting after section 32 (5) the following subsections :—

10 (6) Where a direction having effect, during a particular year, in respect of a particular proclaimed place is given under either of subsections (2) and (2A), a subsequent direction having effect, during that year, in respect of that proclaimed place may be given under the other of those subsections.

15 (7) The operation of a direction given under either of subsections (2) and (2A) is not affected by, or by the giving of, a subsequent direction under the other of those subsections.

20 (c) by omitting section 37 and by inserting instead the following section :—

25 37. (1) A Judge in chambers may, in respect of any proceedings, give any judgment or decision, or make any order, which he could lawfully give or make in court and which he considers may be properly given or made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere.

30 (2) Where a Judge reserves his judgment or his decision on any question of fact or law, subsection (1) does not apply to or in respect of the judgment or decision, whether the judgment or decision is to be given after a hearing in court or in chambers.

35

(d)

District Court (Amendment).

- (d) (i) by omitting section 38 (1) (a) and by inserting instead the following paragraph :— Sec. 38.
(Reserva-
tion of
judgment
or decision.)
- (a) give his judgment or decision in court—
- 5 (i) at the proper place in relation to those proceedings; or
- (ii) at any other place at which he is authorised by this Act to hear or dispose of those proceedings,
- 10 at any time, whether or not that time is specified in respect of that place under section 32 (2) or (2A); or
- (ii) by omitting from section 38 (2) the matter “(3) (a)” and by inserting instead the matter “(2A)”;
- 15
- (e) by omitting from section 44 (1) (a) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 44.
(Actions.)
- (f) by omitting from section 48 the matter “\$10,000” wherever occurring and by inserting instead the matter “\$20,000”; Sec. 48.
(Miscellan-
eous limita-
tions on
jurisdic-
tion.)
- 20
- (g) by omitting from section 49 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 49.
(Actions not
to be split
or divided.)
- (h) by omitting from section 50 the matter “\$10,000” wherever occurring and by inserting instead the words “the amount for which an action may be brought on that cause of action under this Act”; Sec. 50.
(Abandon-
ment.)
- 25
- (i) (i) by omitting from section 51 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 51.
(Consent
jurisdic-
tion.)
- 30
- (ii)

District Court (Amendment).

(ii) by inserting after section 51 (2) the following subsection :—

(3) This section does not apply in relation to an action referred to in section 44 (1) (b).

5 (j) by omitting section 55 (5) and by inserting Sec. 55.
instead the following subsections :— (Relevant places.)

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either—

10 (a) direct that the proper place in relation to the action shall remain unchanged; or

(b) order that such proclaimed place as the Court thinks fit and as is specified in the order (whether or not that place is a relevant place) shall be deemed to be the proper place in relation to the action,

15 and an order under paragraph (b) shall have the same effect as if it were an order for a change of venue under section 40 to the proclaimed place so specified.

20 (6) Nothing in this section affects—

(a) the power of the Court under section 40 to change the venue of any action; or

25 (b) the right of any party to the action to apply for such a change of venue.

(k) (i) by inserting in section 76 after the word Sec. 76.
“action” the words “commenced before the (Amount recover-
able.)
commencement of section 3 (k) of the District Court (Amendment) Act, 1974,”;

30 (ii) by inserting at the end of section 76 the following subsection :—

(2) Where in an action commenced after the commencement of section 3 (k) of the District Court (Amendment) Act, 1974, a verdict

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5 verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

10 (a) the maximum amount for which the action was authorised by this Act to be brought; or

15 (b) that amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

(1) (i) by omitting from section 91 (2) (b) the words Sec. 91. “by the judgment creditor before the presiding registrar” and by inserting instead the words (Examination summons.) “as to the matters referred to in subsection (3)”;

20

(ii) by omitting section 91 (3) and by inserting instead the following subsection :—

25 (3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons—

30 (a) the judgment creditor may orally examine that person before the presiding registrar; or

35 (b) where the judgment creditor has so requested in accordance with the rules, the presiding registrar may, in accordance with the rules, orally examine that person,

as

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as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

5 (iii) by inserting after section 91 (6) the following subsection :—

(7) Subsection (3) does not authorise both the judgment creditor and the presiding registrar at the one examination to examine a person as to the matters referred to in subsection (3).

(m) (i) by omitting section 92 (7) (a) and by inserting instead the following paragraph :—

15 (a) the judgment creditor attends before the registrar—

Sec. 92.
(Failure to attend in answer to examination summons.)

(i) the judgment creditor may orally examine that person before the registrar; or

20 (ii) where the judgment creditor has so requested in accordance with the rules, the registrar may, in accordance with the rules, orally examine that person,

25 as to the matters referred to in section 91 (3); or

(ii) by inserting in section 92 (7) (b) (i) after the word "rules" the word "orally";

30 (iii) by omitting from section 92 (7) (b) (i) the words "and report to the judgment creditor the results of the examination";

(iv)

District Court (Amendment).

(iv) by inserting after section 92 (8) the following subsection :—

5 (9) Subsection (7) (a) does not authorise both the judgment creditor and the registrar at the one examination to examine a person as to the matters referred to in section 91 (3).

(n) by inserting after section 94 the following section:— Sec. 94A.

10 94A. Where a person is examined by a registrar under this Subdivision in relation to a judgment debt, the results of the examination shall be reported to the judgment creditor by the registrar as soon as practicable. Report of certain examinations.

(o) by inserting in section 96 after the word "may" the words ", if it thinks fit,"; Sec. 96. (Court may exercise registrar's powers under this Subdivision.)

15 (p) by inserting after section 103 (3) the following subsections :— Sec. 103. (Bank accounts.)

(4) Where—

20 (a) after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor in a deposit account, the garnishee pays to the registrar the whole or any part of the debt attached; and

25 (b) the condition, or one of the conditions, applicable to the account is that a deposit book must be produced before money is withdrawn,

30 the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the bank, require the registrar

to

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to retain the amount so paid for any specified period not exceeding two months commencing on the date of payment thereof.

(5) Where—

- 5 (a) a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection; and
- 10 (b) the garnishee during that period makes application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation thereto but nevertheless, because of the
- 15 production of a current deposit book relating to that amount or any part thereof, has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment
- 20 debtor, the whole or any part of the debt attached,

the Court may, if it thinks fit, order the registrar to repay that amount or any part thereof to the garnishee.

25 (6) Where a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part thereof to the judgment creditor—

30 (a) until after—

- 35 (i) the garnishee, by instrument in writing signed by an officer of the bank, informs the registrar that, or the registrar has other information satisfying him that, a current deposit book relating to that amount or any
- part

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5 part thereof has, during that period,
come into the possession of the
garnishee at the place of keeping of
the account to the credit of which
the amount was standing; or

(ii) the expiration of that period,

whichever first occurs; and

10 (b) unless he is satisfied, on such information
as is available to him, that no application
made during that period by the garnishee
for an order under subsection (5) in
relation to that amount or any part thereof
is still pending,

15 and where that amount or any part thereof is
ordered to be repaid to the garnishee under sub-
section (5), the balance (if any) only is payable to
the judgment creditor.

20 (q) (i) by inserting in section 105 (1) after the word
“payment” where secondly occurring the words Sec. 105.
(Payment by garnishee.)
“(subject to section 103)”;

(ii) by omitting from section 105 (2) the word
“Payment” and by inserting instead the words
“Subject to subsection (3), payment”;

25 (iii) by inserting after section 105 (2) the following
subsection :—

(3) Where any amount is ordered to be
repaid to a garnishee under section 103 (5)—

30 (a) the payment of that amount by the
garnishee does not, and shall be
deemed never to have, satisfied the
judgment debt; and

(b) this Division applies to and in respect
of the judgment debt as if the garnishee
had never made that payment.

(r)

District Court (Amendment).

- (r) (i) by omitting from section 122 (3) the words Sec. 122.
 "The rules" and by inserting instead the words (Taxation
 "Without affecting the generality of section of costs.)
 161 (3), the rules";
- 5 (ii) by omitting from section 122 (3) the word
 "otherwise" and by inserting instead the words
 "by reference to such other factors relating to
 the action as are specified in the rules";
- 10 (s) (i) by omitting from section 124 the matter Sec. 124.
 "\$100" wherever occurring and by inserting (Limitations
 instead the words "the prescribed amount"; on costs.)
- (ii) by inserting after section 124 (3) the following
 subsection : —
- 15 (4) In this section, "prescribed amount"
 means—
- (a) in relation to an action commenced
 before the commencement of section 3
 (s) of the District Court (Amend-
 ment) Act, 1974—\$100; or
- 20 (b) in relation to an action commenced
 after the commencement of section 3
 (s) of that Act—\$250.
- (t) by inserting after section 127 (5) the following Sec. 127.
 subsection : — (Application
to Supreme
- 25 (6) This section does not apply to or in respect
 of a judgment after a trial without a jury in an
 action commenced after the commencement of
 section 3 (t) of the District Court (Amendment)
 Act, 1974. Court for
new trial.)
- 30 (u) (i) by inserting in section 128 (1) after the word Sec. 128.
 "action" where secondly occurring the words (Appeal to
 "commenced before the commencement of section Supreme
 3 (u) of the District Court (Amendment) Court.)
 Act, 1974";

(ii)

District Court (Amendment).

- 5 (ii) by inserting in section 128 (2) after the word
"action" where firstly occurring the words
"commenced before the commencement of
section 3 (u) of the District Court
(Amendment) Act, 1974,";
- (iii) by inserting after section 128 (2) the following
subsection :—
- 10 (2A) An appeal shall, subject to sections
129 and 130, lie to the Supreme Court from
any ruling, order, direction or decision of the
Judge in an action commenced after the com-
mencement of section 3 (u) of the District
Court (Amendment) Act, 1974.
- 15 (iv) by omitting from section 128 (3) the matter
“(1) or (2)” and by inserting instead the
matter “(1), (2) or (2A)”;
- (v) by inserting in section 128 (4) after the matter
“(2)” the words “or (2A) in an action in
which the relief sought or granted includes an
injunction under section 46”;
- 20 (vi) by omitting from section 128 (6) the matter
“(1) or (2)” and by inserting instead the
matter “(1), (2) or (2A)”;
- 25 (v) (i) by inserting in section 129 after the matter **Sec. 129.**
“(1)” the matter “or (2A)”;
(Agreement not to
- (ii) by omitting from section 129 the words “of appeal.)
the Court”;
- (w) (i) by inserting in section 130 (1) after the matter **Sec. 130.**
“128 (1)” the matter “or (2A)”;
(Whether application or appeal to Supreme Court is as of right.)
- (ii)

District Court (Amendment).

(ii) by omitting from section 130 (1) (a) the words "of \$1,000 or upwards—as of right" and by inserting instead the following words :—

5 "of—

(i) in the case of an action commenced before the commencement of section 3 (w) of the District Court (Amendment) Act, 1974—\$1,000 or upwards; or

(ii) in the case of an action commenced after the commencement of section 3 (w) of that Act—\$3,000 or upwards,

15 as of right";

(x) by omitting section 143 and by inserting instead the following section :—

20 143. (1) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as an action in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

30 (2) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(y)

District Court (Amendment).

- (y) (i) by inserting in section 144 (1) (a) after the word "pleadings" the words "(if any)"; **Sec. 144.**
(Procedure on transfer.)
- 5 (ii) by omitting from section 144 (1) (a) the words "those copies" and by inserting instead the words "that copy or those copies, as the case may be,";
- (iii) by inserting in section 144 (1) (a) after the word "lodge" where thirdly occurring the words "it or";
- 10 (iv) by omitting from section 144 (1) (b) the word "copies" and by inserting instead the words "copy or copies, as the case may be, has or";
- 15 (v) by omitting from section 144 (1) (b) (ii) the words "to try the issues raised by the pleadings";
- (vi) by inserting in section 144 (1) (c) (ii) after the word "pleadings" the words "(if any)";
- 20 (vii) by inserting after section 144 (2) the following subsection :—
- (3) Where proceedings become, by virtue of subsection (1) (b) (ii), an action in the Court—
- 25 (a) the action shall, for the purposes only of section 76, be deemed to have been commenced at the time the proceedings so became an action and not at the time of the commencement of the proceedings in the Supreme Court; and
- 30 (b) section 76 (2) applies to the action as if it had been brought for an amount for which it would have been authorised by this Act to be brought had the proceedings been commenced in the
- 35 Court and not in the Supreme Court.

(z)

District Court (Amendment).

(z) by omitting section 150 (2) and by inserting instead the following subsection :—

Sec. 150.
(Regulations: Court fees.)

5 (2) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.

(aa) (i) by inserting after section 161 (1) (a) the following paragraph :—

Sec. 161.
(Rules.)

10 (ai) prescribing the extent to which, and the manner in which, the provisions of this Act and the rules shall apply to and in respect of proceedings pending immediately before the commencement of this Act in a District Court established under the District Courts Act, 1912;

20 (ii) by inserting in section 161 (1) (1) after the words "evidence may be given" the words "(including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales)";

(iii) by omitting section 161 (3) and by inserting instead the following subsection :—

25 (3) Rules may be made so as to apply differently according to such factors as may be specified in the rules.

(bb) by omitting from section 167 the words "Subject to section 194,";

Sec. 167.
(Abolition of Courts of Quarter Sessions.)

(cc) by omitting section 171 (4) and by inserting instead the following subsection :—

Sec. 171.
(Regulations: practice and procedure.)

30 (4) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.

(dd)

District Court (Amendment).

(dd) by omitting section 175 and by inserting instead Sec. 175. the following section :—

5 175. (1) Where another Act or an instrument ^{Hearing of} under another Act provides, or has the effect of ^{appeals.} providing, that an appeal made to the Court in its criminal and special jurisdiction may or shall be heard and disposed of by the Court sitting at a place specified in the Act or instrument, or at a place of a class or description so specified, nothing in
10 this Part prevents that appeal from being heard and disposed of at that or such a place, whether or not it is an appointed place.

15 (2) An appeal made to the Court in its criminal and special jurisdiction, other than an appeal to which subsection (1) applies, may be heard and disposed of by the Court sitting at any proclaimed place, whether or not it is an appointed place.

20 (ee) (i) by inserting in section 179 (1) (a) after the ^{Sec. 179.} matter "rules;" the word "and"; ^(Judges to meet and make recommendations.)
(ii) by omitting section 179 (1) (b);

(ff) by omitting section 194 and by inserting instead Sec. 194. the following section :—

25 194. (1) Where any proceedings would, had ^{Pending} section 3 (ff) of the District Court (Amendment) ^{proceedings,} Act, 1974, not taken effect, have been continued, ^{etc.} heard or disposed of after the commencement of that provision in a former Court, those proceedings shall be continued, heard or disposed of, respectively, in the new Court in its criminal and special
30 jurisdiction, sitting at the place at which the former Court was sitting.

35 (2) Nothing in subsection (1) affects the powers of the Supreme Court under section 577 of the Crimes Act 1900.

(3)

District Court (Amendment).

(3) Where a question of law was submitted by a Chairman of Quarter Sessions to—

- 5 (a) the Court of Criminal Appeal under section 5B of the Criminal Appeal Act, 1912, and the matter was pending in that Court immediately before the commencement of this subsection, that section; or
- 10 (b) the Supreme Court under section 131A of the Justices Act, 1902, and the matter was pending in that Court immediately before the commencement of this subsection, that section,

15 shall apply to and in respect of the matter as if the question had been submitted by a Judge of the new Court.

(4) Any act, matter or thing that could, had section 3 (ff) of the District Court (Amendment) Act, 1974, not taken effect, have been done or suffered by a person in his capacity as a Chairman of Quarter Sessions may be done or suffered by him in his capacity as a Judge of the new Court.

20

(5) A reference to, or required to be read and construed as a reference to, the new Court in its criminal and special jurisdiction in—

- 25 (a) sections 5C and 5D of the Criminal Appeal Act, 1912, as amended by the District Court (Amendment) Act, 1974, includes; and
- 30 (b) sections 5C and 5D of the Criminal Appeal Act, 1912, as in force before the commencement of section 3 (ff) of the District Court (Amendment) Act, 1974, shall, as from the commencement of this Act, be deemed to have included,

District Court (Amendment).

a reference to—

(c) a former Court in existence before the commencement of this Act; and

5 (d) a former Court continued in existence under the section which this section replaces.

4. The Supreme Court Act, 1970, is amended—

Amendment of Act No. 52, 1970. Sec. 48. (Assignment to the Court of Appeal.)

(a) by omitting section 48 (1) (a) (iv) and by inserting instead the following subparagraph :—

10 (iv) the District Court or a Judge of the District Court;

(b) by omitting section 75A (2) (d) and by inserting instead the following paragraph :—

Sec. 75A. (Appeal.)

(d) a trial—

15 (i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

20 (ii) with a jury in an action commenced after the commencement of that section,

in the District Court.

(c) by omitting section 105 (b) and by inserting instead the following paragraph :—

Sec. 105. (Application of sections 106, 107.)

(b) after a trial—

25 (i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

(ii)

District Court (Amendment).

(ii) with a jury in an action commenced after the commencement of that section,
in the District Court.

- 5 **5.** The Criminal Appeal Act, 1912, is amended—
- Amendment
of Act No.
16, 1912.
- (a) (i) by omitting from section 5A (2) (a) the words "or chairman of quarter sessions";
- Sec. 5A (2).
(Reserving
question
of law.)
- (ii) by omitting from section 5A (2) (b) the words "or chairman";
- 10 (b) (i) by omitting from section 5B the words "chairman of quarter sessions" and by inserting instead the words "Judge of the District Court";
- Sec. 5B.
(Case stated
from District
Court.)
- (ii) by omitting from section 5B the words "a court of quarter sessions" and by inserting instead the words "the District Court in its criminal and special jurisdiction";
- 15 (iii) by omitting from section 5B the words "the Court of Quarter Sessions" and by inserting instead the words "the District Court";
- 20 (c) by omitting from section 5C the words "a court of quarter sessions" and by inserting instead the words "the District Court";
- Sec. 5c.
(Appeal
against
quashing
of an
indictment.)
- (d) by omitting from section 5D the words "any court of quarter sessions" and by inserting instead the words "the District Court".
- 25
- Sec. 5D.
(Appeal
by Crown
against
sentence.)
- 6.** (1) A direction given under section 32 (3) (a) of the District Court Act, 1973, and in force immediately before the commencement of this subsection, and an order made
- 30 under section 32 (3) of that Act in relation to the direction, shall be deemed to have been given and made, respectively, under section 32 (2A) of that Act, as amended by this Act.
- Savings and
transitional
provisions.

District Court (Amendment).

(2) Section 91 (3) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

5 (3) An examination summons issued before the commencement of this subsection shall, after that commencement, be as valid as if section 91 (3) of the District Court Act, 1973, as amended by this Act, had been in force at the time of its issue.

10 (4) Section 92 (7) (a) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

15 (5) Sections 103 and 105 of the District Court Act, 1973, as amended by this Act, apply to and in respect of a judgment debt in respect of an action commenced or disposed of before or after the commencement of this subsection.

20 (6) A rule made before the commencement of this subsection shall be, and shall be deemed always to have been, as valid as if section 161 (1) (ai) of the District Court Act, 1973, as amended by this Act, had been in force as from the commencement of the District Court Act, 1973, but nothing in this subsection affects any judgment or decision given or
25 made in any court before the commencement of this subsection.

(7) Section 143 of the District Court Act, 1973, as amended by this Act, applies to and in respect of proceedings commenced before or after the commencement of this
30 subsection.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

[20c]

No. , 1974.

A BILL

To increase the amount for which certain actions may be brought in the District Court; to make further provisions with respect to the practice and procedure of the District Court and the powers of the Supreme Court on appeals from the District Court; for these and other purposes to amend the District Court Act, 1973, the Supreme Court Act, 1970, and the Criminal Appeal Act, 1912; to validate certain matters; and for purposes connected therewith.

[MR McCaw—10 *September*, 1974.]

BE

District Court (Amendment).

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

1. This Act may be cited as the "District Court Short title.
(Amendment) Act, 1974".

2. (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

10 (2) Except as provided in subsection (1), the several
provisions of this Act shall commence on such day or days
as may be appointed by the Governor in respect thereof and
as may be notified by proclamation published in the Gazette.

3. The District Court Act, 1973, is amended—

Amendment
of Act No.
9, 1973.

15 (a) by omitting from section 30 the matter "\$200" and
by inserting instead the matter "\$500"; Sec. 30.
(Obstructing
bailiffs.)

(b) (i) by inserting after section 32 (2) the following Sec. 32.
subsection:— (Directions
as to
sittings at
proclaimed
places.)
20 (2A) The Chief Judge may, if in his opinion
it is expedient to do so, by order in writing,
direct that the Court shall, during a specified
year, sit in its civil jurisdiction at a specified
proclaimed place at specified times.

25 (ii) by inserting in section 32 (3) after the matter
“(2)” the matter “or (2A)”;

(iii) by omitting section 32 (3) (a);

(iv)

District Court (Amendment).

(iv) by inserting in section 32 (4) after the matter “(2)” the matter “, (2A)”;

(v) by inserting in section 32 (5) after the matter “(2)” the matter “or (2A)”;

5 (vi) by omitting section 32 (5) (a);

(vii) by inserting after section 32 (5) the following subsections :—

10 (6) Where a direction having effect, during a particular year, in respect of a particular proclaimed place is given under either of subsections (2) and (2A), a subsequent direction having effect, during that year, in respect of that proclaimed place may be given under the other of those subsections.

15 (7) The operation of a direction given under either of subsections (2) and (2A) is not affected by, or by the giving of, a subsequent direction under the other of those subsections.

20 (c) by omitting section 37 and by inserting instead the following section :—

25 37. (1) A Judge in chambers may, in respect of any proceedings, give any judgment or decision, or make any order, which he could lawfully give or make in court and which he considers may be properly given or made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere. Chambers.

30 (2) Where a Judge reserves his judgment or his decision on any question of fact or law, subsection (1) does not apply to or in respect of the judgment or decision, whether the judgment or decision is to be given after a hearing in court or
35 in chambers.

(d)

District Court (Amendment).

- (d) (i) by omitting section 38 (1) (a) and by inserting instead the following paragraph :— Sec. 38.
(Reserva-
tion of
judgment
or decision.)
- (a) give his judgment or decision in court—
- 5 (i) at the proper place in relation to those proceedings; or
- (ii) at any other place at which he is authorised by this Act to hear or dispose of those proceedings,
- 10 at any time, whether or not that time is specified in respect of that place under section 32 (2) or (2A); or
- (ii) by omitting from section 38 (2) the matter “(3) (a)” and by inserting instead the matter “(2A)”;
- 15
- (e) by omitting from section 44 (1) (a) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 44.
(Actions.)
- (f) by omitting from section 48 the matter “\$10,000” wherever occurring and by inserting instead the matter “\$20,000”; Sec. 48.
(Miscellan-
eous limita-
tions on
jurisdic-
tion.)
- 20
- (g) by omitting from section 49 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 49.
(Actions not
to be split
or divided.)
- (h) by omitting from section 50 the matter “\$10,000” wherever occurring and by inserting instead the words “the amount for which an action may be brought on that cause of action under this Act”; Sec. 50.
(Abandon-
ment.)
- 25
- (i) (i) by omitting from section 51 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”; Sec. 51.
(Consent
jurisdic-
tion.)
- 30 (ii)

District Court (Amendment).

- (ii) by inserting after section 51 (2) the following subsection :—
- (3) This section does not apply in relation to an action referred to in section 44 (1) (b).
- 5 (j) by omitting section 55 (5) and by inserting instead the following subsections :— Sec. 55.
(Relevant places.)
- (5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either—
- 10 (a) direct that the proper place in relation to the action shall remain unchanged; or
- (b) order that such proclaimed place as the Court thinks fit and as is specified in the order (whether or not that place is a relevant place) shall be deemed to be the proper
- 15 place in relation to the action,
and an order under paragraph (b) shall have the same effect as if it were an order for a change of venue under section 40 to the proclaimed place so
- 20 specified.
- (6) Nothing in this section affects—
- (a) the power of the Court under section 40 to change the venue of any action; or
- 25 (b) the right of any party to the action to apply for such a change of venue.
- (k) (i) by inserting in section 76 after the word Sec. 76.
(Amount recoverable.) “action” the words “commenced before the commencement of section 3 (k) of the District Court (Amendment) Act, 1974,”;
- 30 (ii) by inserting at the end of section 76 the following subsection :—
- (2) Where in an action commenced after the commencement of section 3 (k) of the District Court (Amendment) Act, 1974, a verdict

District Court (Amendment).

5 verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

- 10 (a) the maximum amount for which the action was authorised by this Act to be brought; or
- (b) that amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,
- 15 as the case may be.

- (1) (i) by omitting from section 91 (2) (b) the words “by the judgment creditor before the presiding registrar” and by inserting instead the words “as to the matters referred to in subsection (3)”;
- 20 (ii) by omitting section 91 (3) and by inserting instead the following subsection :—
- (3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons—
- 25 (a) the judgment creditor may orally examine that person before the presiding registrar; or
- 30 (b) where the judgment creditor has so requested in accordance with the rules, the presiding registrar may, in accordance with the rules, orally examine that person,
- 35

as

District Court (Amendment).

as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

5 (iii) by inserting after section 91 (6) the following subsection :—

10 (7) Subsection (3) does not authorise both the judgment creditor and the presiding registrar at the one examination to examine a person as to the matters referred to in subsection (3).

(m) (i) by omitting section 92 (7) (a) and by inserting instead the following paragraph :—

15 (a) the judgment creditor attends before the registrar— Sec. 92.
(Failure to attend in answer to examination summons.)

(i) the judgment creditor may orally examine that person before the registrar; or

20 (ii) where the judgment creditor has so requested in accordance with the rules, the registrar may, in accordance with the rules, orally examine that person,

25 as to the matters referred to in section 91 (3); or

(ii) by inserting in section 92 (7) (b) (i) after the word "rules" the word "orally";

30 (iii) by omitting from section 92 (7) (b) (i) the words "and report to the judgment creditor the results of the examination";

(iv)

District Court (Amendment).

(iv) by inserting after section 92 (8) the following subsection :—

5 (9) Subsection (7) (a) does not authorise both the judgment creditor and the registrar at the one examination to examine a person as to the matters referred to in section 91 (3).

(n) by inserting after section 94 the following section:— Sec. 94A.

10 94A. Where a person is examined by a registrar under this Subdivision in relation to a judgment debt, the results of the examination shall be reported to the judgment creditor by the registrar as soon as practicable. Report of certain examinations.

(o) by inserting in section 96 after the word “may” the words “, if it thinks fit,”; Sec. 96. (Court may exercise registrar’s powers under this Subdivision.)

15 (p) by inserting after section 103 (3) the following subsections :— Sec. 103. (Bank accounts.)

(4) Where—

20 (a) after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor in a deposit account, the garnishee pays to the registrar the whole or any part of the debt attached; and

25 (b) the condition, or one of the conditions, applicable to the account is that a deposit book must be produced before money is withdrawn,

30 the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the bank, require the registrar

to

District Court (Amendment).

to retain the amount so paid for any specified period not exceeding two months commencing on the date of payment thereof.

(5) Where—

- 5 (a) a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection; and
- 10 (b) the garnishee during that period makes application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation thereto but nevertheless, because of the production of a current deposit book relating to that amount or any part thereof,
- 15 has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached,
- 20

the Court may, if it thinks fit, order the registrar to repay that amount or any part thereof to the garnishee.

25 (6) Where a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part thereof to the judgment creditor—

30 (a) until after—

- 35 (i) the garnishee, by instrument in writing signed by an officer of the bank, informs the registrar that, or the registrar has other information satisfying him that, a current deposit book relating to that amount or any part

District Court (Amendment).

5 part thereof has, during that period,
come into the possession of the
garnishee at the place of keeping of
the account to the credit of which
the amount was standing; or

(ii) the expiration of that period,
whichever first occurs; and

10 (b) unless he is satisfied, on such information
as is available to him, that no application
made during that period by the garnishee
for an order under subsection (5) in
relation to that amount or any part thereof
is still pending,

15 and where that amount or any part thereof is
ordered to be repaid to the garnishee under sub-
section (5), the balance (if any) only is payable to
the judgment creditor.

20 (q) (i) by inserting in section 105 (1) after the word Sec. 105.
“payment” where secondly occurring the words (Payment by
“(subject to section 103)” ; garnishee.)

(ii) by omitting from section 105 (2) the word
“Payment” and by inserting instead the words
“Subject to subsection (3), payment” ;

25 (iii) by inserting after section 105 (2) the following
subsection :—

(3) Where any amount is ordered to be
repaid to a garnishee under section 103 (5)—

30 (a) the payment of that amount by the
garnishee does not, and shall be
deemed never to have, satisfied the
judgment debt; and

(b) this Division applies to and in respect
of the judgment debt as if the garnishee
had never made that payment.

(r)

District Court (Amendment).

- (r) (i) by omitting from section 122 (3) the words "The rules" and by inserting instead the words "Without affecting the generality of section 161 (3), the rules";
- 5 (ii) by omitting from section 122 (3) the word "otherwise" and by inserting instead the words "by reference to such other factors relating to the action as are specified in the rules";
- 10 (s) (i) by omitting from section 124 the matter "\$100" wherever occurring and by inserting instead the words "the prescribed amount";
- (ii) by inserting after section 124 (3) the following subsection :—
- 15 (4) In this section, "prescribed amount" means—
- (a) in relation to an action commenced before the commencement of section 3 (s) of the District Court (Amendment) Act, 1974—\$100; or
- 20 (b) in relation to an action commenced after the commencement of section 3 (s) of that Act—\$250.
- (t) by inserting after section 127 (5) the following subsection :—
- 25 (6) This section does not apply to or in respect of a judgment after a trial without a jury in an action commenced after the commencement of section 3 (t) of the District Court (Amendment) Act, 1974.
- 30 (u) (i) by inserting in section 128 (1) after the word "action" where secondly occurring the words "commenced before the commencement of section 3 (u) of the District Court (Amendment) Act, 1974";

Sec. 122.
(Taxation
of costs.)

Sec. 124.
(Limitations
on costs.)

Sec. 127.
(Application
to Supreme
Court for
new trial.)

Sec. 128.
(Appeal to
Supreme
Court.)

(ii)

District Court (Amendment).

- 5 (ii) by inserting in section 128 (2) after the word
“action” where firstly occurring the words
“commenced before the commencement of
section 3 (u) of the District Court
(Amendment) Act, 1974.”;
- (iii) by inserting after section 128 (2) the following
subsection :—
- 10 (2A) An appeal shall, subject to sections
129 and 130, lie to the Supreme Court from
any ruling, order, direction or decision of the
Judge in an action commenced after the com-
mencement of section 3 (u) of the District
Court (Amendment) Act, 1974.
- 15 (iv) by omitting from section 128 (3) the matter
“(1) or (2)” and by inserting instead the
matter “(1), (2) or (2A)”;
- (v) by inserting in section 128 (4) after the matter
“(2)” the words “or (2A) in an action in
20 which the relief sought or granted includes an
injunction under section 46”;
- (vi) by omitting from section 128 (6) the matter
“(1) or (2)” and by inserting instead the
matter “(1), (2) or (2A)”;
- 25 (v) (i) by inserting in section 129 after the matter Sec. 129.
“(1)” the matter “or (2A)”;
(Agreement
not to
- (ii) by omitting from section 129 the words “of appeal.)
the Court”;
- (w) (i) by inserting in section 130 (1) after the matter Sec. 130.
“128 (1)” the matter “or (2A)”;
(Whether
application
or appeal
to Supreme
Court is
as of
right.)
- (ii)

District Court (Amendment).

(ii) by omitting from section 130 (1) (a) the words "of \$1,000 or upwards—as of right" and by inserting instead the following words :—

5 "of—

(i) in the case of an action commenced before the commencement of section 3 (w) of the District Court (Amendment) Act, 1974—\$1,000 or upwards; or

10 (ii) in the case of an action commenced after the commencement of section 3 (w) of that Act—\$3,000 or upwards,

15 as of right";

(x) by omitting section 143 and by inserting instead the following section :—

20 143. (1) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as an action in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

25 (2) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(y)

District Court (Amendment).

- (y) (i) by inserting in section 144 (1) (a) after the word "pleadings" the words "(if any)"; **Sec. 144.**
(Procedure on transfer.)
- 5 (ii) by omitting from section 144 (1) (a) the words "those copies" and by inserting instead the words "that copy or those copies, as the case may be,";
- (iii) by inserting in section 144 (1) (a) after the word "lodge" where thirdly occurring the words "it or";
- 10 (iv) by omitting from section 144 (1) (b) the word "copies" and by inserting instead the words "copy or copies, as the case may be, has or";
- 15 (v) by omitting from section 144 (1) (b) (ii) the words "to try the issues raised by the pleadings";
- (vi) by inserting in section 144 (1) (c) (ii) after the word "pleadings" the words "(if any)";
- 20 (vii) by inserting after section 144 (2) the following subsection :—
- (3) Where proceedings become, by virtue of subsection (1) (b) (ii), an action in the Court—
- 25 (a) the action shall, for the purposes only of section 76, be deemed to have been commenced at the time the proceedings so became an action and not at the time of the commencement of the proceedings in the Supreme Court; and
- 30 (b) section 76 (2) applies to the action as if it had been brought for an amount for which it would have been authorised by this Act to be brought had the proceedings been commenced in the Court and not in the Supreme Court.
- 35 (z)

District Court (Amendment).

(dd) by omitting section 175 and by inserting instead Sec. 175.
the following section :—

5 175. (1) Where another Act or an instrument Hearing of
under another Act provides, or has the effect of appeals.
providing, that an appeal made to the Court in its
criminal and special jurisdiction may or shall be
heard and disposed of by the Court sitting at a
place specified in the Act or instrument, or at a place
10 of a class or description so specified, nothing in
this Part prevents that appeal from being heard and
disposed of at that or such a place, whether or not
it is an appointed place.

15 (2) An appeal made to the Court in its
criminal and special jurisdiction, other than an
appeal to which subsection (1) applies, may be
heard and disposed of by the Court sitting at any
proclaimed place, whether or not it is an appointed
place.

20 (ee) (i) by inserting in section 179 (1) (a) after the Sec. 179.
matter "rules;" the word "and"; (Judges

(ii) by omitting section 179 (1) (b); to meet
and make

(ff) by omitting section 194 and by inserting instead Sec. 194.
the following section :— recommendations.)

25 194. (1) Where any proceedings would, had Pending
section 3 (ff) of the District Court (Amendment) proceedings,
Act, 1974, not taken effect, have been continued, etc.
heard or disposed of after the commencement of
that provision in a former Court, those proceedings
shall be continued, heard or disposed of, respec-
30 tively, in the new Court in its criminal and special
jurisdiction, sitting at the place at which the former
Court was sitting.

35 (2) Nothing in subsection (1) affects the
powers of the Supreme Court under section 577 of
the Crimes Act 1900.

(3)

District Court (Amendment).

(3) Where a question of law was submitted by a Chairman of Quarter Sessions to—

- 5 (a) the Court of Criminal Appeal under section 5B of the Criminal Appeal Act, 1912, and the matter was pending in that Court immediately before the commencement of this subsection, that section; or
- 10 (b) the Supreme Court under section 131A of the Justices Act, 1902, and the matter was pending in that Court immediately before the commencement of this subsection, that section,

15 shall apply to and in respect of the matter as if the question had been submitted by a Judge of the new Court.

(4) Any act, matter or thing that could, had section 3 (ff) of the District Court (Amendment) Act, 1974, not taken effect, have been done or suffered by a person in his capacity as a Chairman of Quarter Sessions may be done or suffered by him in his capacity as a Judge of the new Court.

20

(5) A reference to, or required to be read and construed as a reference to, the new Court in its criminal and special jurisdiction in—

- 25 (a) sections 5c and 5D of the Criminal Appeal Act, 1912, as amended by the District Court (Amendment) Act, 1974, includes; and
- 30 (b) sections 5c and 5D of the Criminal Appeal Act, 1912, as in force before the commencement of section 3 (ff) of the District Court (Amendment) Act, 1974, shall, as from the commencement of this Act, be deemed to have included,

District Court (Amendment).

a reference to—

(c) a former Court in existence before the commencement of this Act; and

5 (d) a former Court continued in existence under the section which this section replaces.

4. The Supreme Court Act, 1970, is amended—

Amendment
of Act No.
52, 1970.
Sec. 48.
(Assignment
to the Court
of Appeal.)

(a) by omitting section 48 (1) (a) (iv) and by inserting instead the following subparagraph :—

10 (iv) the District Court or a Judge of the District Court;

(b) by omitting section 75A (2) (d) and by inserting instead the following paragraph :—

Sec. 75A.
(Appeal.)

(d) a trial—

15 (i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

20 (ii) with a jury in an action commenced after the commencement of that section,

in the District Court.

(c) by omitting section 105 (b) and by inserting instead the following paragraph :—

Sec. 105.
(Application
of sections
106, 107.)

(b) after a trial—

25 (i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

(ii)

District Court (Amendment).

(ii) with a jury in an action commenced after the commencement of that section,
in the District Court.

- 5 **5.** The Criminal Appeal Act, 1912, is amended—
- Amendment
of Act No.
16, 1912.
- (a) (i) by omitting from section 5A (2) (a) the words “or chairman of quarter sessions”;
- Sec. 5A (2).
(Reserving
question
of law.)
- (ii) by omitting from section 5A (2) (b) the words “or chairman”;
- 10 (b) (i) by omitting from section 5B the words “chairman of quarter sessions” and by inserting instead the words “Judge of the District Court”;
- Sec. 5B.
(Case stated
from District
Court.)
- (ii) by omitting from section 5B the words “a court of quarter sessions” and by inserting instead the words “the District Court in its criminal and special jurisdiction”;
- 15 (iii) by omitting from section 5B the words “the Court of Quarter Sessions” and by inserting instead the words “the District Court”;
- 20 (c) by omitting from section 5C the words “a court of quarter sessions” and by inserting instead the words “the District Court”;
- Sec. 5c.
(Appeal
against
quashing
of an
indictment.)
- 25 (d) by omitting from section 5D the words “any court of quarter sessions” and by inserting instead the words “the District Court”.
- Sec. 5d.
(Appeal
by Crown
against
sentence.)

6. (1) A direction given under section 32 (3) (a) of the District Court Act, 1973, and in force immediately before the commencement of this subsection, and an order made under section 32 (3) of that Act in relation to the direction, shall be deemed to have been given and made, respectively, under section 32 (2A) of that Act, as amended by this Act.

Savings and
transitional
provisions.

District Court (Amendment).

(2) Section 91 (3) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

5 (3) An examination summons issued before the commencement of this subsection shall, after that commencement, be as valid as if section 91 (3) of the District Court Act, 1973, as amended by this Act, had been in force at the time of its issue.

10 (4) Section 92 (7) (a) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

15 (5) Sections 103 and 105 of the District Court Act, 1973, as amended by this Act, apply to and in respect of a judgment debt in respect of an action commenced or disposed of before or after the commencement of this subsection.

20 (6) A rule made before the commencement of this subsection shall be, and shall be deemed always to have been, as valid as if section 161 (1) (ai) of the District Court Act, 1973, as amended by this Act, had been in force as from the commencement of the District Court Act, 1973, but nothing in this subsection affects any judgment or decision given or
25 made in any court before the commencement of this subsection.

(7) Section 143 of the District Court Act, 1973, as amended by this Act, applies to and in respect of proceedings commenced before or after the commencement of this
30 subsection.

BY AUTHORITY

DISTRICT COURT (AMENDMENT) BILL, 1974

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to increase to \$500 the penalty for assaulting, resisting, interrupting or obstructing a bailiff or rescuing property taken by a bailiff;
- (b) to authorise the Chief Judge of the District Court to give directions as to the sittings of the Court in its civil jurisdiction, whether or not a direction has been or is given by the Governor;
- (c) to enable a Judge of the District Court to give a judgment or decision in chambers, except where he has reserved his judgment or decision;
- (d) to increase from \$10,000 to \$20,000 the amount for which an action may be brought in the District Court (other than an action for the recovery of the unliquidated balance of a partnership account, a distributive share under an intestacy or a legacy, proceedings for the possession of land and equity proceedings);
- (e) to provide for the examination of a judgment debtor by a registrar of the District Court;
- (f) to provide that where a bank has paid an amount under a garnishee order to a registrar of the District Court in respect of money in a deposit account—
 - (i) the bank may require the registrar to retain the amount for a period of up to two months or until the deposit book for the account comes into the possession of the bank at the place where the account is kept, whichever first occurs; and
 - (ii) the Court may order the repayment of the amount to the bank if during that period the judgment debtor has, by producing the deposit book, received payment of the debt attached;
- (g) to increase from \$100 to \$250 the minimum amount recovered in an action in the District Court for which costs are not recoverable without a certificate of the Court;
- (h) to provide that an appeal lies to the Supreme Court from any decision of a Judge of the District Court on a question of fact as well as of law;
- (i) to provide that an appeal lies as of right from the District Court to the Supreme Court where the amount or value of the claim is or exceeds \$3,000;
- (j) to extend the power of the Supreme Court to transfer proceedings from the Supreme Court to the District Court;

- (k) to validate rules of the District Court relating to the application to proceedings pending in a District Court immediately before the commencement of the District Court Act, 1973, of the provisions of that Act and the rules;
- (l) to complete the abolition of Courts of Quarter Sessions and to make transitional provisions in connection therewith; and
- (m) to make other provisions of a minor, consequential or ancillary nature.

PROOF

No. . . . , 1974.

A BILL

To increase the amount for which certain actions may be brought in the District Court; to make further provisions with respect to the practice and procedure of the District Court and the powers of the Supreme Court on appeals from the District Court; for these and other purposes to amend the District Court Act, 1973, the Supreme Court Act, 1970, and the Criminal Appeal Act, 1912; to validate certain matters; and for purposes connected therewith.

[Mr McCaw—10 September, 1974.]

BE

District Court (Amendment).

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

1. This Act may be cited as the "District Court Short title. (Amendment) Act, 1974".

2. (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

10 (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The District Court Act, 1973, is amended—

Amendment
of Act No.
9, 1973.

15 (a) by omitting from section 30 the matter "\$200" and
by inserting instead the matter "\$500"; Sec. 30.
(Obstructing
bailiffs.)

20 (b) (i) by inserting after section 32 (2) the following
subsection:— Sec. 32.
(Directions
as to
sittings at
proclaimed
places.)
(2A) The Chief Judge may, if in his opinion
it is expedient to do so, by order in writing,
direct that the Court shall, during a specified
year, sit in its civil jurisdiction at a specified
proclaimed place at specified times.

25 (ii) by inserting in section 32 (3) after the matter
"(2)" the matter "or (2A)";

(iii) by omitting section 32 (3) (a);

(iv)

District Court (Amendment).

- 5 (iv) by inserting in section 32 (4) after the matter
“(2)” the matter “, (2A)”;
- (v) by inserting in section 32 (5) after the matter
“(2)” the matter “or (2A)”;
- (vi) by omitting section 32 (5) (a);
- (vii) by inserting after section 32 (5) the following
subsections :—

10 (6) Where a direction having effect, during
a particular year, in respect of a particular
proclaimed place is given under either of sub-
sections (2) and (2A), a subsequent direction
having effect, during that year, in respect of
that proclaimed place may be given under the
other of those subsections.

15 (7) The operation of a direction given
under either of subsections (2) and (2A) is
not affected by, or by the giving of, a subse-
quent direction under the other of those
subsections.

- 20 (c) by omitting section 37 and by inserting instead the following section :—

25 37. (1) A Judge in chambers may, in respect of
any proceedings, give any judgment or decision, or
make any order, which he could lawfully give or
make in court and which he considers may be
properly given or made in chambers, whether those
chambers are situated at the proper place in relation
to those proceedings, at any other proclaimed place
or elsewhere.

30 (2) Where a Judge reserves his judgment or
his decision on any question of fact or law, sub-
section (1) does not apply to or in respect of the
judgment or decision, whether the judgment or
decision is to be given after a hearing in court or
35 in chambers.

(d)

District Court (Amendment).

- (d) (i) by omitting section 38 (1) (a) and by inserting instead the following paragraph :—
- (a) give his judgment or decision in court—
- 5 (i) at the proper place in relation to those proceedings; or
- (ii) at any other place at which he is authorised by this Act to hear or dispose of those proceedings,
- 10 at any time, whether or not that time is specified in respect of that place under section 32 (2) or (2A); or
- (ii) by omitting from section 38 (2) the matter “(3) (a)” and by inserting instead the matter “(2A)”;
- 15
- (e) by omitting from section 44 (1) (a) the matter “\$10,000” and by inserting instead the matter “\$20,000”;
- 20
- (f) by omitting from section 48 the matter “\$10,000” wherever occurring and by inserting instead the matter “\$20,000”;
- (g) by omitting from section 49 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”;
- 25
- (h) by omitting from section 50 the matter “\$10,000” wherever occurring and by inserting instead the words “the amount for which an action may be brought on that cause of action under this Act”;
- 30
- (i) (i) by omitting from section 51 (2) the matter “\$10,000” and by inserting instead the matter “\$20,000”;
- (ii)

Sec. 38.
(Reserva-
tion of
judgment
or decision.)

Sec. 44.
(Actions.)

Sec. 48.
(Miscellan-
eous limita-
tions on
jurisdic-
tion.)

Sec. 49.
(Actions not
to be split
or divided.)

Sec. 50.
(Abandon-
ment.)

Sec. 51.
(Consent
jurisdic-
tion.)

District Court (Amendment).

(ii) by inserting after section 51 (2) the following subsection :—

(3) This section does not apply in relation to an action referred to in section 44 (1) (b).

5 (j) by omitting section 55 (5) and by inserting instead the following subsections :— Sec. 55. (Relevant places.)

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either—

10 (a) direct that the proper place in relation to the action shall remain unchanged; or

(b) order that such proclaimed place as the Court thinks fit and as is specified in the order (whether or not that place is a relevant place) shall be deemed to be the proper place in relation to the action,

15 and an order under paragraph (b) shall have the same effect as if it were an order for a change of venue under section 40 to the proclaimed place so specified.

20 (6) Nothing in this section affects—
(a) the power of the Court under section 40 to change the venue of any action; or
25 (b) the right of any party to the action to apply for such a change of venue.

(k) (i) by inserting in section 76 after the word "action" the words "commenced before the commencement of section 3 (k) of the District Court (Amendment) Act, 1974,"; Sec. 76. (Amount recoverable.)

30 (ii) by inserting at the end of section 76 the following subsection :—

(2) Where in an action commenced after the commencement of section 3 (k) of the District Court (Amendment) Act, 1974, a verdict

District Court (Amendment).

5 verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

10 (a) the maximum amount for which the action was authorised by this Act to be brought; or

15 (b) that amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

20 (1) (i) by omitting from section 91 (2) (b) the words “by the judgment creditor before the presiding registrar” and by inserting instead the words “as to the matters referred to in subsection (3)”;

Sec. 91.
(Examination summons.)

(ii) by omitting section 91 (3) and by inserting instead the following subsection :—

25 (3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons—

30 (a) the judgment creditor may orally examine that person before the presiding registrar; or

35 (b) where the judgment creditor has so requested in accordance with the rules, the presiding registrar may, in accordance with the rules, orally examine that person,

as

District Court (Amendment).

as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

5 (iii) by inserting after section 91 (6) the following subsection :—

(7) Subsection (3) does not authorise both the judgment creditor and the presiding registrar at the one examination to examine a person as to the matters referred to in subsection (3).

(m) (i) by omitting section 92 (7) (a) and by inserting instead the following paragraph :—

15 (a) the judgment creditor attends before the registrar—

(i) the judgment creditor may orally examine that person before the registrar; or

20 (ii) where the judgment creditor has so requested in accordance with the rules, the registrar may, in accordance with the rules, orally examine that person,

25 as to the matters referred to in section 91 (3); or

(ii) by inserting in section 92 (7) (b) (i) after the word "rules" the word "orally";

30 (iii) by omitting from section 92 (7) (b) (i) the words "and report to the judgment creditor the results of the examination";

(iv)

Sec. 92.
(Failure to attend in answer to examination summons.)

District Court (Amendment).

(iv) by inserting after section 92 (8) the following subsection :—

5

(9) Subsection (7) (a) does not authorise both the judgment creditor and the registrar at the one examination to examine a person as to the matters referred to in section 91 (3).

(n) by inserting after section 94 the following section:— Sec. 94A.

10

94A. Where a person is examined by a registrar under this Subdivision in relation to a judgment debt, the results of the examination shall be reported to the judgment creditor by the registrar as soon as practicable. Report of certain examinations.

(o) by inserting in section 96 after the word “may” the words “, if it thinks fit,”; Sec. 96. (Court may exercise registrar’s powers under this Sub-division.)

15

(p) by inserting after section 103 (3) the following subsections :— Sec. 103. (Bank accounts.)

(4) Where—

20

(a) after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor in a deposit account, the garnishee pays to the registrar the whole or any part of the debt attached; and

25

(b) the condition, or one of the conditions, applicable to the account is that a deposit book must be produced before money is withdrawn,

30

the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the bank, require the registrar

to

District Court (Amendment).

to retain the amount so paid for any specified period not exceeding two months commencing on the date of payment thereof.

(5) Where—

- 5 (a) a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection; and
- 10 (b) the garnishee during that period makes application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation thereto but nevertheless, because of the
- 15 production of a current deposit book relating to that amount or any part thereof, has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment
- 20 debtor, the whole or any part of the debt attached,

the Court may, if it thinks fit, order the registrar to repay that amount or any part thereof to the garnishee.

- 25 (6) Where a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part thereof to the judgment creditor—

30 (a) until after—

- (i) the garnishee, by instrument in writing signed by an officer of the bank, informs the registrar that, or the registrar has other information satisfying him that, a current deposit book relating to that amount or any

part

District Court (Amendment).

part thereof has, during that period,
come into the possession of the
garnishee at the place of keeping of
the account to the credit of which
the amount was standing; or

(ii) the expiration of that period,

whichever first occurs; and

(b) unless he is satisfied, on such information
as is available to him, that no application
made during that period by the garnishee
for an order under subsection (5) in
relation to that amount or any part thereof
is still pending,

and where that amount or any part thereof is
ordered to be repaid to the garnishee under sub-
section (5), the balance (if any) only is payable to
the judgment creditor.

(q) (i) by inserting in section 105 (1) after the word "payment" where secondly occurring the words "(subject to section 103)";

Sec. 105.
(Payment by
garnishee.)

(ii) by omitting from section 105 (2) the word "Payment" and by inserting instead the words "Subject to subsection (3), payment";

(iii) by inserting after section 105 (2) the following subsection :—

(3) Where any amount is ordered to be repaid to a garnishee under section 103 (5)—

(a) the payment of that amount by the garnishee does not, and shall be deemed never to have, satisfied the judgment debt; and

(b) this Division applies to and in respect of the judgment debt as if the garnishee had never made that payment.

(r)

District Court (Amendment).

- (r) (i) by omitting from section 122 (3) the words "The rules" and by inserting instead the words "Without affecting the generality of section 161 (3), the rules"; Sec. 122. (Taxation of costs.)
- 5 (ii) by omitting from section 122 (3) the word "otherwise" and by inserting instead the words "by reference to such other factors relating to the action as are specified in the rules";
- 10 (s) (i) by omitting from section 124 the matter "\$100" wherever occurring and by inserting instead the words "the prescribed amount"; Sec. 124. (Limitations on costs.)
- (ii) by inserting after section 124 (3) the following subsection :—
- 15 (4) In this section, "prescribed amount" means—
- (a) in relation to an action commenced before the commencement of section 3 (s) of the District Court (Amendment) Act, 1974—\$100; or
- 20 (b) in relation to an action commenced after the commencement of section 3 (s) of that Act—\$250.
- (t) by inserting after section 127 (5) the following subsection :— Sec. 127. (Application to Supreme Court for new trial.)
- 25 (6) This section does not apply to or in respect of a judgment after a trial without a jury in an action commenced after the commencement of section 3 (t) of the District Court (Amendment) Act, 1974.
- 30 (u) (i) by inserting in section 128 (1) after the word "action" where secondly occurring the words "commenced before the commencement of section 3 (u) of the District Court (Amendment) Act, 1974"; Sec. 128. (Appeal to Supreme Court.)

(ii)

District Court (Amendment).

- 5 (ii) by inserting in section 128 (2) after the word
"action" where firstly occurring the words
"commenced before the commencement of
section 3 (u) of the District Court
(Amendment) Act, 1974,";
- (iii) by inserting after section 128 (2) the following
subsection :—
- 10 (2A) An appeal shall, subject to sections
129 and 130, lie to the Supreme Court from
any ruling, order, direction or decision of the
Judge in an action commenced after the com-
mencement of section 3 (u) of the District
Court (Amendment) Act, 1974.
- 15 (iv) by omitting from section 128 (3) the matter
"(1) or (2)" and by inserting instead the
matter "(1), (2) or (2A)";
- 20 (v) by inserting in section 128 (4) after the matter
"(2)" the words "or (2A) in an action in
which the relief sought or granted includes an
injunction under section 46";
- (vi) by omitting from section 128 (6) the matter
"(1) or (2)" and by inserting instead the
matter "(1), (2) or (2A)";
- 25 (v) (i) by inserting in section 129 after the matter **Sec. 129.**
"(1)" the matter "or (2A)"; (Agreement
not to
of appeal.)
- (ii) by omitting from section 129 the words "of
the Court";
- (w) (i) by inserting in section 130 (1) after the matter **Sec. 130.**
"128 (1)" the matter "or (2A)"; (Whether
application
or appeal
to Supreme
Court is
as of
right.)
- (ii)

District Court (Amendment).

(ii) by omitting from section 130 (1) (a) the words "of \$1,000 or upwards—as of right" and by inserting instead the following words :—

5 "of—

(i) in the case of an action commenced before the commencement of section 3 (w) of the District Court (Amendment) Act, 1974—\$1,000 or upwards; or

(ii) in the case of an action commenced after the commencement of section 3 (w) of that Act—\$3,000 or upwards,

15 as of right";

(x) by omitting section 143 and by inserting instead the following section :—

20 143. (1) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as an action in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

25 (2) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(y)

District Court (Amendment).

- (y) (i) by inserting in section 144 (1) (a) after the word "pleadings" the words "(if any)"; Sec. 144.
(Procedure on transfer.)
- 5 (ii) by omitting from section 144 (1) (a) the words "those copies" and by inserting instead the words "that copy or those copies, as the case may be,";
- (iii) by inserting in section 144 (1) (a) after the word "lodge" where thirdly occurring the words "it or";
- 10 (iv) by omitting from section 144 (1) (b) the word "copies" and by inserting instead the words "copy or copies, as the case may be, has or";
- 15 (v) by omitting from section 144 (1) (b) (ii) the words "to try the issues raised by the pleadings";
- (vi) by inserting in section 144 (1) (c) (ii) after the word "pleadings" the words "(if any)";
- 20 (vii) by inserting after section 144 (2) the following subsection :—
- (3) Where proceedings become, by virtue of subsection (1) (b) (ii), an action in the Court—
- 25 (a) the action shall, for the purposes only of section 76, be deemed to have been commenced at the time the proceedings so became an action and not at the time of the commencement of the proceedings in the Supreme Court; and
- 30 (b) section 76 (2) applies to the action as if it had been brought for an amount for which it would have been authorised by this Act to be brought had the proceedings been commenced in the
- 35 Court and not in the Supreme Court.

(z)

District Court (Amendment).

- (z) by omitting section 150 (2) and by inserting instead the following subsection :— **Sec. 150.**
(Regulations: Court fees.)
- 5 (2) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (aa) (i) by inserting after section 161 (1) (a) the following paragraph :— **Sec. 161.**
(Rules.)
- 10 (ai) prescribing the extent to which, and the manner in which, the provisions of this Act and the rules shall apply to and in respect of proceedings pending immediately before the commencement of this Act in a District Court established under the District Courts Act, 1912;
- 15 (ii) by inserting in section 161 (1) (1) after the words "evidence may be given" the words "(including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales)";
- 20 (iii) by omitting section 161 (3) and by inserting instead the following subsection :—
- 25 (3) Rules may be made so as to apply differently according to such factors as may be specified in the rules.
- (bb) by omitting from section 167 the words "Subject to section 194,;" **Sec. 167.**
(Abolition of Courts of Quarter Sessions.)
- (cc) by omitting section 171 (4) and by inserting instead the following subsection :— **Sec. 171.**
(Regulations: practice and procedure.)
- 30 (4) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (dd)

District Court (Amendment).

(dd) by omitting section 175 and by inserting instead Sec. 175. the following section :—

175. (1) Where another Act or an instrument ^{Hearing of} under another Act provides, or has the effect of ^{appeals.} providing, that an appeal made to the Court in its criminal and special jurisdiction may or shall be heard and disposed of by the Court sitting at a place specified in the Act or instrument, or at a place of a class or description so specified, nothing in this Part prevents that appeal from being heard and disposed of at that or such a place, whether or not it is an appointed place.

(2) An appeal made to the Court in its criminal and special jurisdiction, other than an appeal to which subsection (1) applies, may be heard and disposed of by the Court sitting at any proclaimed place, whether or not it is an appointed place.

(ee) (i) by inserting in section 179 (1) (a) after the ^{Sec. 179.} matter "rules;" the word "and"; ^(Judges to meet and make recommendations.)

(ii) by omitting section 179 (1) (b);

(ff) by omitting section 194 and by inserting instead Sec. 194. the following section :—

194. (1) Where any proceedings would, had ^{Pending} section 3 (ff) of the District Court (Amendment) ^{proceedings,} Act, 1974, not taken effect, have been continued, ^{etc.} heard or disposed of after the commencement of that provision in a former Court, those proceedings shall be continued, heard or disposed of, respectively, in the new Court in its criminal and special jurisdiction, sitting at the place at which the former Court was sitting.

(2) Nothing in subsection (1) affects the powers of the Supreme Court under section 577 of the Crimes Act 1900.

(3)

District Court (Amendment).

(3) Where a question of law was submitted by a Chairman of Quarter Sessions to—

- 5 (a) the Court of Criminal Appeal under section 5B of the Criminal Appeal Act, 1912, and the matter was pending in that Court immediately before the commencement of this subsection, that section; or
- 10 (b) the Supreme Court under section 131A of the Justices Act, 1902, and the matter was pending in that Court immediately before the commencement of this subsection, that section,

15 shall apply to and in respect of the matter as if the question had been submitted by a Judge of the new Court.

(4) Any act, matter or thing that could, had section 3 (ff) of the District Court (Amendment) Act, 1974, not taken effect, have been done or suffered by a person in his capacity as a Chairman of Quarter Sessions may be done or suffered by him in his capacity as a Judge of the new Court.

20

(5) A reference to, or required to be read and construed as a reference to, the new Court in its criminal and special jurisdiction in—

- 25 (a) sections 5C and 5D of the Criminal Appeal Act, 1912, as amended by the District Court (Amendment) Act, 1974, includes; and
- 30 (b) sections 5C and 5D of the Criminal Appeal Act, 1912, as in force before the commencement of section 3 (ff) of the District Court (Amendment) Act, 1974, shall, as from the commencement of this Act, be deemed to have included,

District Court (Amendment).

a reference to—

(c) a former Court in existence before the commencement of this Act; and

5

(d) a former Court continued in existence under the section which this section replaces.

4. The Supreme Court Act, 1970, is amended—

Amendment
of Act No.
52, 1970.
Sec. 48.

(a) by omitting section 48 (1) (a) (iv) and by inserting instead the following subparagraph :—

(Assignment
to the Court
of Appeal.)

10

(iv) the District Court or a Judge of the District Court;

(b) by omitting section 75A (2) (d) and by inserting instead the following paragraph :—

Sec. 75A.
(Appeal.)

(d) a trial—

15

(i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

20

(ii) with a jury in an action commenced after the commencement of that section,

in the District Court.

(c) by omitting section 105 (b) and by inserting instead the following paragraph :—

Sec. 105.
(Application
of sections
106, 107.)

25

(b) after a trial—

(i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1974; or

(ii)

District Court (Amendment).

(ii) with a jury in an action commenced after the commencement of that section,
in the District Court.

- 5 **5.** The Criminal Appeal Act, 1912, is amended—
- (a) (i) by omitting from section 5A (2) (a) the words “or chairman of quarter sessions”;
(ii) by omitting from section 5A (2) (b) the words “or chairman”;
- 10 (b) (i) by omitting from section 5B the words “chairman of quarter sessions” and by inserting instead the words “Judge of the District Court”;
(ii) by omitting from section 5B the words “a court of quarter sessions” and by inserting instead the words “the District Court in its criminal and special jurisdiction”;
- 15 (iii) by omitting from section 5B the words “the Court of Quarter Sessions” and by inserting instead the words “the District Court”;
- 20 (c) by omitting from section 5C the words “a court of quarter sessions” and by inserting instead the words “the District Court”;
- 25 (d) by omitting from section 5D the words “any court of quarter sessions” and by inserting instead the words “the District Court”.

Amendment of Act No. 16, 1912.

Sec. 5A (2).
(Reserving question of law.)

Sec. 5B.
(Case stated from District Court.)

Sec. 5c.
(Appeal against quashing of an indictment.)

Sec. 5D.
(Appeal by Crown against sentence.)

30 **6.** (1) A direction given under section 32 (3) (a) of the District Court Act, 1973, and in force immediately before the commencement of this subsection, and an order made under section 32 (3) of that Act in relation to the direction, shall be deemed to have been given and made, respectively, under section 32 (2A) of that Act, as amended by this Act.

Savings and transitional provisions.

District Court (Amendment).

(2) Section 91 (3) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

5 (3) An examination summons issued before the commencement of this subsection shall, after that commencement, be as valid as if section 91 (3) of the District Court Act, 1973, as amended by this Act, had been in force at the time of its issue.

10 (4) Section 92 (7) (a) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

15 (5) Sections 103 and 105 of the District Court Act, 1973, as amended by this Act, apply to and in respect of a judgment debt in respect of an action commenced or disposed of before or after the commencement of this subsection.

20 (6) A rule made before the commencement of this subsection shall be, and shall be deemed always to have been, as valid as if section 161 (1) (ai) of the District Court Act, 1973, as amended by this Act, had been in force as from the commencement of the District Court Act, 1973, but nothing
25 in this subsection affects any judgment or decision given or made in any court before the commencement of this subsection.

(7) Section 143 of the District Court Act, 1973, as amended by this Act, applies to and in respect of proceedings commenced before or after the commencement of this
30 subsection.

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 25 February, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 1, 1975.

An Act to increase the amount for which certain actions may be brought in the District Court; to make further provisions with respect to the practice and procedure of the District Court and the powers of the Supreme Court on appeals from the District Court; for these and other purposes to amend the District Court Act, 1973, the Supreme Court Act, 1970, and the Criminal Appeal Act, 1912; to validate certain matters; and for purposes connected therewith. [Assented to, 11th March, 1975.]

BE

(vi)

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

H. G. COATES,
Acting Chairman of Committees of the Legislative Assembly.

District Court (Amendment).

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

Short title. **1.** This Act may be cited as the "District Court (Amendment) Act, 1975".

Commence- **2.** (1) This section and section 1 shall commence on the
ment. date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment **3.** The District Court Act, 1973, is amended—
of Act No.
9, 1973.

Sec. 30. (a) by omitting from section 30 the matter "\$200" and
(Obstructing by inserting instead the matter "\$500";
bailiffs.)

Sec. 32. (b) (i) by inserting after section 32 (2) the following
(Directions subsection :—
as to (2A) The Chief Judge may, if in his opinion
sittings at it is expedient to do so, by order in writing,
proclaimed direct that the Court shall, during a specified
places.) year, sit in its civil jurisdiction at a specified
 proclaimed place at specified times.

(ii) by inserting in section 32 (3) after the matter
"(2)" the matter "or (2A)";

(iii) by omitting section 32 (3) (a);

(iv)

District Court (Amendment).

- (iv) by inserting in section 32 (4) after the matter “(2)” the matter “, (2A)”;
- (v) by inserting in section 32 (5) after the matter “(2)” the matter “or (2A)”;
- (vi) by omitting section 32 (5) (a);
- (vii) by inserting after section 32 (5) the following subsections :—

(6) Where a direction having effect, during a particular year, in respect of a particular proclaimed place is given under either of subsections (2) and (2A), a subsequent direction having effect, during that year, in respect of that proclaimed place may be given under the other of those subsections.

(7) The operation of a direction given under either of subsections (2) and (2A) is not affected by, or by the giving of, a subsequent direction under the other of those subsections.

- (c) by omitting section 37 and by inserting instead the **Sec. 37.** following section :—

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

(2) Where a Judge reserves his judgment or his decision on any question of fact or law, subsection (1) does not apply to or in respect of the judgment or decision, whether the judgment or decision is to be given after a hearing in court or in chambers.

(ii)

(d)

District Court (Amendment).

Sec. 38.
(Reserva-
tion of
judgment
or decision.)

(d) (i) by omitting section 38 (1) (a) and by insert-
ing instead the following paragraph :—

(a) give his judgment or decision in
court—

(i) at the proper place in relation
to those proceedings; or

(ii) at any other place at which he
is authorised by this Act to hear
or dispose of those proceedings,

at any time, whether or not that time is
specified in respect of that place under
section 32 (2) or (2A); or

(ii) by omitting from section 38 (2) the matter
“(3) (a)” and by inserting instead the matter
“(2A)”;

Sec. 44.
(Actions.)

(e) by omitting from section 44 (1) (a) the matter
“\$10,000” and by inserting instead the matter
“\$20,000”;

Sec. 48.
(Miscellan-
ous limita-
tions on
jurisdic-
tion.)

(f) by omitting from section 48 the matter “\$10,000”
wherever occurring and by inserting instead the
matter “\$20,000”;

Sec. 49.
(Actions not
to be split
or divided.)

(g) by omitting from section 49 (2) the matter
“\$10,000” and by inserting instead the matter
“\$20,000”;

Sec. 50.
(Abandon-
ment.)

(h) by omitting from section 50 the matter “\$10,000”
wherever occurring and by inserting instead the
words “the amount for which an action may be
brought on that cause of action under this Act”;

Sec. 51.
(Consent
jurisdic-
tion.)

(i) (i) by omitting from section 51 (2) the matter
“\$10,000” and by inserting instead the matter
“\$20,000”;

(ii)

District Court (Amendment).

(ii) by inserting after section 51 (2) the following subsection :—

(3) This section does not apply in relation to an action referred to in section 44 (1) (b).

(j) by omitting section 55 (5) and by inserting instead the following subsections :—

Sec. 55.
(Relevant places.)

(5) Where the plaintiff files an affidavit in accordance with subsection (3), the Court shall either—

(a) direct that the proper place in relation to the action shall remain unchanged; or

(b) order that such proclaimed place as the Court thinks fit and as is specified in the order (whether or not that place is a relevant place) shall be deemed to be the proper place in relation to the action,

and an order under paragraph (b) shall have the same effect as if it were an order for a change of venue under section 40 to the proclaimed place so specified.

(6) Nothing in this section affects—

(a) the power of the Court under section 40 to change the venue of any action; or

(b) the right of any party to the action to apply for such a change of venue.

(k) (i) by inserting in section 76 after the word "action" the words "commenced before the commencement of section 3 (k) of the District Court (Amendment) Act, 1975,";

Sec. 76.
(Amount recoverable.)

(ii) by inserting at the end of section 76 the following subsection :—

(2) Where in an action commenced after the commencement of section 3 (k) of the District Court (Amendment) Act, 1975, a verdict

District Court (Amendment).

verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover—

- (a) the maximum amount for which the action was authorised by this Act to be brought; or
- (b) that amount reduced in accordance with section 10 of the Law Reform (Miscellaneous Provisions) Act, 1965,

as the case may be.

Sec. 91.
(Examination
summons.)

- (1) (i) by omitting from section 91 (2) (b) the words “by the judgment creditor before the presiding registrar” and by inserting instead the words “as to the matters referred to in subsection (3)”;

- (ii) by omitting section 91 (3) and by inserting instead the following subsection :—

(3) Where the person to whom the examination summons is directed attends before the presiding registrar as required by the examination summons—

- (a) the judgment creditor may orally examine that person before the presiding registrar; or
- (b) where the judgment creditor has so requested in accordance with the rules, the presiding registrar may, in accordance with the rules, orally examine that person,

as

District Court (Amendment).

as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances.

- (iii) by inserting after section 91 (6) the following subsection :—

(7) Subsection (3) does not authorise both the judgment creditor and the presiding registrar at the one examination to examine a person as to the matters referred to in subsection (3).

- (m) (i) by omitting section 92 (7) (a) and by inserting instead the following paragraph :—

(a) the judgment creditor attends before the registrar—

Sec. 92.
(Failure to attend in answer to examination summons.)

(i) the judgment creditor may orally examine that person before the registrar; or

(ii) where the judgment creditor has so requested in accordance with the rules, the registrar may, in accordance with the rules, orally examine that person,

as to the matters referred to in section 91 (3); or

- (ii) by inserting in section 92 (7) (b) (i) after the word "rules" the word "orally";
- (iii) by omitting from section 92 (7) (b) (i) the words "and report to the judgment creditor the results of the examination";

(iv)

District Court (Amendment).

(iv) by inserting after section 92 (8) the following subsection :—

(9) Subsection (7) (a) does not authorise both the judgment creditor and the registrar at the one examination to examine a person as to the matters referred to in section 91 (3).

Sec. 94A.

Report of certain examinations.

(n) by inserting after section 94 the following section:—

94A. Where a person is examined by a registrar under this Subdivision in relation to a judgment debt, the results of the examination shall be reported to the judgment creditor by the registrar as soon as practicable.

Sec. 96.

(Court may exercise registrar's powers under this Subdivision.)

(o) by inserting in section 96 after the word "may" the words ", if it thinks fit,";

Sec. 103.

(Bank accounts.)

(p) by inserting after section 103 (3) the following subsections :—

(4) Where—

(a) after service of a garnishee order on a bank with respect to a debt, being an amount standing to the credit of a judgment debtor in a deposit account, the garnishee pays to the registrar the whole or any part of the debt attached; and

(b) the condition, or one of the conditions, applicable to the account is that a deposit book must be produced before money is withdrawn,

the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the bank, require the registrar

to

District Court (Amendment).

to retain the amount so paid for any specified period not exceeding two months commencing on the date of payment thereof.

(5) Where—

- (a) a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection; and
- (b) the garnishee during that period makes application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation thereto but nevertheless, because of the production of a current deposit book relating to that amount or any part thereof, has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached,

the Court may, if it thinks fit, order the registrar to repay that amount or any part thereof to the garnishee.

(6) Where a registrar is required under subsection (4) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part thereof to the judgment creditor—

(a) until after—

- (i) the garnishee, by instrument in writing signed by an officer of the bank, informs the registrar that, or the registrar has other information satisfying him that, a current deposit book relating to that amount or any

part

District Court (Amendment).

part thereof has, during that period, come into the possession of the garnishee at the place of keeping of the account to the credit of which the amount was standing; or

(ii) the expiration of that period,

whichever first occurs; and

(b) unless he is satisfied, on such information as is available to him, that no application made during that period by the garnishee for an order under subsection (5) in relation to that amount or any part thereof is still pending,

and where that amount or any part thereof is ordered to be repaid to the garnishee under subsection (5), the balance (if any) only is payable to the judgment creditor.

Sec. 105.
(Payment by
garnishee.)

(q) (i) by inserting in section 105 (1) after the word "payment" where secondly occurring the words "(subject to section 103)";

(ii) by omitting from section 105 (2) the word "Payment" and by inserting instead the words "Subject to subsection (3), payment";

(iii) by inserting after section 105 (2) the following subsection :—

(3) Where any amount is ordered to be repaid to a garnishee under section 103 (5)—

(a) the payment of that amount by the garnishee does not, and shall be deemed never to have, satisfied the judgment debt; and

(b) this Division applies to and in respect of the judgment debt as if the garnishee had never made that payment.

(r)

District Court (Amendment).

- (r) (i) by omitting from section 122 (3) the words "The rules" and by inserting instead the words "Without affecting the generality of section 161 (3), the rules"; Sec. 122. (Taxation of costs.)
- (ii) by omitting from section 122 (3) the word "otherwise" and by inserting instead the words "by reference to such other factors relating to the action as are specified in the rules";
- (s) (i) by omitting from section 124 the matter "\$100" wherever occurring and by inserting instead the words "the prescribed amount"; Sec. 124. (Limitations on costs.)
- (ii) by inserting after section 124 (3) the following subsection:—
- (4) In this section, "prescribed amount" means—
- (a) in relation to an action commenced before the commencement of section 3 (s) of the District Court (Amendment) Act, 1975—\$100; or
- (b) in relation to an action commenced after the commencement of section 3 (s) of that Act—\$250.
- (t) by inserting after section 127 (5) the following subsection:— Sec. 127. (Application to Supreme Court for new trial.)
- (6) This section does not apply to or in respect of a judgment after a trial without a jury in an action commenced after the commencement of section 3 (t) of the District Court (Amendment) Act, 1975.
- (u) (i) by inserting in section 128 (1) after the word "action" where secondly occurring the words "commenced before the commencement of section 3 (u) of the District Court (Amendment) Act, 1975"; Sec. 128. (Appeal to Supreme Court.)

(ii)

District Court (Amendment).

(ii) by inserting in section 128 (2) after the word "action" where firstly occurring the words "commenced before the commencement of section 3 (u) of the District Court (Amendment) Act, 1975,";

(iii) by inserting after section 128 (2) the following subsection :—

(2A) An appeal shall, subject to sections 129 and 130, lie to the Supreme Court from any ruling, order, direction or decision of the Judge in an action commenced after the commencement of section 3 (u) of the District Court (Amendment) Act, 1975.

(iv) by omitting from section 128 (3) the matter "(1) or (2)" and by inserting instead the matter "(1), (2) or (2A)";

(v) by inserting in section 128 (4) after the matter "(2)" the words "or (2A) in an action in which the relief sought or granted includes an injunction under section 46";

(vi) by omitting from section 128 (6) the matter "(1) or (2)" and by inserting instead the matter "(1), (2) or (2A)";

Sec. 129.
(Agreement
not to
appeal.)

(v) (i) by inserting in section 129 after the matter "(1)" the matter "or (2A)";

(ii) by omitting from section 129 the words "of the Court";

Sec. 130.
(Whether
application
or appeal
to Supreme
Court is
as of
right.)

(w) (i) by inserting in section 130 (1) after the matter "128 (1)" the matter "or (2A)";

(ii)

District Court (Amendment).

- (ii) by omitting from section 130 (1) (a) the words "of \$1,000 or upwards—as of right" and by inserting instead the following words :—

"of—

- (i) in the case of an action commenced before the commencement of section 3 (w) of the District Court (Amendment) Act, 1975—\$1,000 or upwards; or
- (ii) in the case of an action commenced after the commencement of section 3 (w) of that Act—\$3,000 or upwards,

as of right";

- (x) by omitting section 143 and by inserting instead the **Sec. 143.** following section :—

143. (1) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as an action in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

Transfer of
proceed-
ings from
Supreme
Court.

(2) Where the Supreme Court is of opinion that any proceedings that are pending in the Supreme Court could properly have been commenced as proceedings under Subdivision 2 of Division 8 in the Court, the Supreme Court may, if it thinks fit, on the application of any party or of its own motion, order that those proceedings be transferred to the Court sitting at such proclaimed place as the Supreme Court thinks fit.

(y)

District Court (Amendment).

Sec. 144.
(Procedure
on transfer.)

- (y) (i) by inserting in section 144 (1) (a) after the word "pleadings" the words "(if any)";
- (ii) by omitting from section 144 (1) (a) the words "those copies" and by inserting instead the words "that copy or those copies, as the case may be,";
- (iii) by inserting in section 144 (1) (a) after the word "lodge" where thirdly occurring the words "it or";
- (iv) by omitting from section 144 (1) (b) the word "copies" and by inserting instead the words "copy or copies, as the case may be, has or";
- (v) by omitting from section 144 (1) (b) (ii) the words "to try the issues raised by the pleadings";
- (vi) by inserting in section 144 (1) (c) (ii) after the word "pleadings" the words "(if any)";
- (vii) by inserting after section 144 (2) the following subsection :—
- (3) Where proceedings become, by virtue of subsection (1) (b) (ii), an action in the Court—
- (a) the action shall, for the purposes only of section 76, be deemed to have been commenced at the time the proceedings so became an action and not at the time of the commencement of the proceedings in the Supreme Court; and
- (b) section 76 (2) applies to the action as if it had been brought for an amount for which it would have been authorised by this Act to be brought had the proceedings been commenced in the Court and not in the Supreme Court.

(z)

District Court (Amendment).

- (z) by omitting section 150 (2) and by inserting instead the following subsection :— **Sec. 150.**
(Regulations: Court fees.)
- (2) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (aa) (i) by inserting after section 161 (1) (a) the following paragraph :— **Sec. 161.**
(Rules.)
- (ai) prescribing the extent to which, and the manner in which, the provisions of this Act and the rules shall apply to and in respect of proceedings pending immediately before the commencement of this Act in a District Court established under the District Courts Act, 1912;
- (ii) by inserting in section 161 (1) (1) after the words "evidence may be given" the words "(including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales)";
- (iii) by omitting section 161 (3) and by inserting instead the following subsection :—
- (3) Rules may be made so as to apply differently according to such factors as may be specified in the rules.
- (bb) by omitting from section 167 the words "Subject to section 194,"; **Sec. 167.**
(Abolition of Courts of Quarter Sessions.)
- (cc) by omitting section 171 (4) and by inserting instead the following subsection :— **Sec. 171.**
(Regulations: practice and procedure.)
- (4) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (dd)

District Court (Amendment).

Sec. 175. (dd) by omitting section 175 and by inserting instead the following section :—

Hearing of
appeals.

175. (1) Where another Act or an instrument under another Act provides, or has the effect of providing, that an appeal made to the Court in its criminal and special jurisdiction may or shall be heard and disposed of by the Court sitting at a place specified in the Act or instrument, or at a place of a class or description so specified, nothing in this Part prevents that appeal from being heard and disposed of at that or such a place, whether or not it is an appointed place.

(2) An appeal made to the Court in its criminal and special jurisdiction, other than an appeal to which subsection (1) applies, may be heard and disposed of by the Court sitting at any proclaimed place, whether or not it is an appointed place.

Sec. 179. (ee) (i) by inserting in section 179 (1) (a) after the matter "rules;" the word "and";
(ii) by omitting section 179 (1) (b);

(Judges to meet and make recommendations.)

Sec. 194. (ff) by omitting section 194 and by inserting instead the following section :—

Pending proceedings,
etc.

194. (1) Where any proceedings would, had section 3 (ff) of the District Court (Amendment) Act, 1975, not taken effect, have been continued, heard or disposed of after the commencement of that provision in a former Court, those proceedings shall be continued, heard or disposed of, respectively, in the new Court in its criminal and special jurisdiction, sitting at the place at which the former Court was sitting.

(2) Nothing in subsection (1) affects the powers of the Supreme Court under section 577 of the Crimes Act 1900.

(3)

District Court (Amendment).

(3) Where a question of law was submitted by a Chairman of Quarter Sessions to—

- (a) the Court of Criminal Appeal under section 5B of the Criminal Appeal Act, 1912, and the matter was pending in that Court immediately before the commencement of this subsection, that section; or
- (b) the Supreme Court under section 131A of the Justices Act, 1902, and the matter was pending in that Court immediately before the commencement of this subsection, that section,

shall apply to and in respect of the matter as if the question had been submitted by a Judge of the new Court.

(4) Any act, matter or thing that could, had section 3 (ff) of the District Court (Amendment) Act, 1975, not taken effect, have been done or suffered by a person in his capacity as a Chairman of Quarter Sessions may be done or suffered by him in his capacity as a Judge of the new Court.

(5) A reference to, or required to be read and construed as a reference to, the new Court in its criminal and special jurisdiction in—

- (a) sections 5C and 5D of the Criminal Appeal Act, 1912, as amended by the District Court (Amendment) Act, 1975, includes; and
- (b) sections 5C and 5D of the Criminal Appeal Act, 1912, as in force before the commencement of section 3 (ff) of the District Court (Amendment) Act, 1975, shall, as from the commencement of this Act, be deemed to have included,

District Court (Amendment).

a reference to—

(c) a former Court in existence before the commencement of this Act; and

(d) a former Court continued in existence under the section which this section replaces.

Amendment
of Act No.
52, 1970.
Sec. 48.
(Assignment
to the Court
of Appeal.)

4. The Supreme Court Act, 1970, is amended—

(a) by omitting section 48 (1) (a) (iv) and by inserting instead the following subparagraph :—

(iv) the District Court or a Judge of the District Court;

Sec. 75A.
(Appeal.)

(b) by omitting section 75A (2) (d) and by inserting instead the following paragraph :—

(d) a trial—

(i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1975; or

(ii) with a jury in an action commenced after the commencement of that section,

in the District Court.

Sec. 105.
(Application
of sections
106, 107.)

(c) by omitting section 105 (b) and by inserting instead the following paragraph :—

(b) after a trial—

(i) with or without a jury in an action commenced before the commencement of section 4 of the District Court (Amendment) Act, 1975; or

(ii)

District Court (Amendment).

(ii) with a jury in an action commenced after the commencement of that section,

in the District Court.

5. The Criminal Appeal Act, 1912, is amended—
- Amendment
of Act No.
16, 1912.
- (a) (i) by omitting from section 5A (2) (a) the words “or chairman of quarter sessions”;
- Sec. 5A (2).
(Reserving
question
of law.)
- (ii) by omitting from section 5A (2) (b) the words “or chairman”;
- (b) (i) by omitting from section 5B the words “chairman of quarter sessions” and by inserting instead the words “Judge of the District Court”;
- Sec. 5B.
(Case stated
from District
Court.)
- (ii) by omitting from section 5B the words “a court of quarter sessions” and by inserting instead the words “the District Court in its criminal and special jurisdiction”;
- (iii) by omitting from section 5B the words “the Court of Quarter Sessions” and by inserting instead the words “the District Court”;
- (c) by omitting from section 5C the words “a court of quarter sessions” and by inserting instead the words “the District Court”;
- Sec. 5c.
(Appeal
against
quashing
of an
indictment.)
- (d) by omitting from section 5D the words “any court of quarter sessions” and by inserting instead the words “the District Court”.
- Sec. 5D.
(Appeal
by Crown
against
sentence.)

6. (1) A direction given under section 32 (3) (a) of the District Court Act, 1973, and in force immediately before the commencement of this subsection, and an order made under section 32 (3) of that Act in relation to the direction, shall be deemed to have been given and made, respectively, under section 32 (2A) of that Act, as amended by this Act.

(2)

District Court (Amendment).

(2) Section 91 (3) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

(3) An examination summons issued before the commencement of this subsection shall, after that commencement, be as valid as if section 91 (3) of the District Court Act, 1973, as amended by this Act, had been in force at the time of its issue.

(4) Section 92 (7) (a) of the District Court Act, 1973, as amended by this Act, applies to and in respect of a judgment debtor in respect of an action commenced or disposed of before or after the commencement of this subsection.

(5) Sections 103 and 105 of the District Court Act, 1973, as amended by this Act, apply to and in respect of a judgment debt in respect of an action commenced or disposed of before or after the commencement of this subsection.

(6) A rule made before the commencement of this subsection shall be, and shall be deemed always to have been, as valid as if section 161 (1) (ai) of the District Court Act, 1973, as amended by this Act, had been in force as from the commencement of the District Court Act, 1973, but nothing in this subsection affects any judgment or decision given or made in any court before the commencement of this subsection.

(7) Section 143 of the District Court Act, 1973, as amended by this Act, applies to and in respect of proceedings commenced before or after the commencement of this subsection.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 11th March, 1975.*