

**DISTRICT COURT OF
WESTERN AUSTRALIA.**

No. 84 of 1969.

**AN ACT to establish The District Court of Western
Australia, and for incidental purposes.**

[Assented to 17th November, 1969.]

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *District Court of Western Australia Act, 1969.* Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commence-
ment.

4. (1) The Courts of Session Act, 1921, is hereby repealed. Repeal and Saving.

(2) Without affecting the application of the Interpretation Act, 1918, to this Act, any proceeding, action, cause or matter respectively—

(a) commenced under the Courts of Session Act, 1921, and pending or in progress on the date of the coming into operation of this Act, may be continued, completed and enforced as if this Act had not come into operation;

(b) commenced under the Supreme Court Act, 1935, or the Local Courts Act, 1904, and pending or in progress on that date, that could have been commenced under this Act in the Court, if this Act had been in operation, may be continued, completed and enforced under and subject to the Supreme Court Act, 1935 or the Local Courts Act, 1904, as the case requires.

(3) Where before the date of the coming into operation of this Act, a person has been ordered to be committed to take his trial for an indictable offence before the Supreme Court or a Court of Session, if— Committal for trial. Cf. Criminal Code, s. 612.

(a) the trial has not commenced before that date; and

(b) the indictable offence is one that after that date is triable in the Court,

the person shall be deemed to have been ordered to take his trial for the indictable offence before the Court sitting at the place appointed for the holding of the Supreme Court or Court of Session, before which he was ordered to take his trial.

(4) After the date of the coming into operation of this Act, the books and records of a Court of Session for a Division, shall be kept by the Registrar Records of a Court of Session.

of the Court at the place or nearest the place where that Court of Session was held prior to that date, and that Registrar may certify for all purposes any such book or record or any copy thereof or extract therefrom, as if he were the Clerk of the Court of Session of that Division.

Construction
and
application
of certain
Acts.
Vide Act No.
24 of 1921,
s. 33.

5. (1) A reference in any other Act or in any regulation, rule, by-law or instrument made under any other Act in force after the coming into operation of this Act, to a Court of Session, the Chairman thereof, or any officer thereof, shall be read as a reference to the Court, a District Court Judge, or the corresponding officer of the Court, as the case requires.

(2) The provisions of the Justices Act, 1902, except sections 39 and 115 and Part VIII thereof, apply with such modifications as circumstances require, to the Court as a court of criminal jurisdiction, and to the Court, a District Court Judge and the Registrar and other officers of the Court as those provisions apply to the Supreme Court, a Judge thereof and to the corresponding officers of the Supreme Court.

(3) The Court is a court within the meaning of the term "Court" in the Evidence Act, 1906, and the Suitors' Fund Act, 1964, and the provisions thereof apply, with such modifications as circumstances require, to the Court, a District Court Judge and any officer of the Court.

(4) The Court is an inferior Court within the meaning of the term "inferior Court" in the Vexatious Proceedings Restriction Act, 1930.

(5) Nothing in this Act affects the operation of the Motor Vehicle (Third Party Insurance) Act, 1943 and of section 16E thereof in particular.

6. In this Act, unless the contrary intention appears— Definitions.

“action” means a civil proceeding commenced by writ or in such other manner as is prescribed by Rules of Court and includes suit but does not include any criminal proceeding by the Crown;

“bailiff” includes a deputy bailiff and person duly appointed under this Act to assist the bailiff;

“cause” includes any action, suit or other original proceeding between a plaintiff and a defendant and any criminal proceeding by the Crown;

“defendant” includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, a civil proceeding;

“District Court Judge” means a Judge of the Court or acting Judge of the Court;

“Local Court” means a Local Court established under the Local Courts Act, 1904;

“judgment” includes a judgment, order or other decision or determination of the Court or a District Court Judge;

“jurisdiction” includes all powers and authorities incidental to the exercise of jurisdiction;

“matter” means a proceeding in the Court that is commenced otherwise than by writ;

“party” includes a person served with notice of, or attending a proceeding, although not named in the record;

“plaintiff” includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding;

“practice and procedure” includes matters relating to costs, the method of pleading, the institution, conduct, trial or hearing and adjudication in any proceeding, the attendance of witnesses, the custody on bail of accused or convicted persons and the enforcement and execution of judgments and all the jurisdiction and powers conferred and the matters prescribed, provided for, or regulated by the Rules of Court;

“section” means a section of this Act;

“the Chairman” means the District Court Judge appointed Chairman of Judges and includes the acting Chairman of Judges;

“the Court” means The District Court of Western Australia established under this Act;

“the Registrar” in relation to the Court sitting at Perth means the person appointed under this Act to be the Registrar of the Court and in relation to the Court sitting at any other place means the person so appointed to be Deputy Registrar of the Court sitting at that place.

PART II.—THE COURT.

Division 1.—Establishment of The District Court of Western Australia.

Establish-
ment of the
Court.

7. (1) There shall be in and for the State a Court to be known as The District Court of Western Australia.

(2) The Court shall be constituted in the manner provided by this Act.

The Court to
be a Court of
Record and
constitution
thereof.

8. (1) The Court—

- (a) is a Court of record;
- (b) shall be constituted by a District Court Judge as provided in this Act; and
- (c) has the criminal and civil jurisdiction conferred on it by this Act.

(2) The jurisdiction of the Court is exercisable by one District Court Judge, sitting in Court, or as provided in section 21, sitting in chambers.

(3) The Court constituted by one District Court Judge may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another District Court Judge is at the same time sitting and exercising the jurisdiction of the Court.

9. (1) There shall be a seal of the Court at each place at which the Court is held under this Act. Seal of the Court.

(2) All writs, notices, summonses, certificates, warrants and other processes issued out of the Court shall be sealed or stamped with the seal of the Court.

Division 2.—District Court Judges.

10. (1) The Governor may, by commission in Her Majesty's name, appoint as many persons as are needed for the due administration of this Act to be District Court Judges. The Judges of the Court.

(2) A person shall not be appointed a District Court Judge unless—

- (a) he is a practitioner as defined by the Legal Practitioners Act, 1893, of not less than eight years standing and practice; or
- (b) he is a practising barrister of the High Court of Australia, of not less than eight years standing.

(3) A person so appointed shall be a District Court Judge for the whole of the State and under his commission is empowered to act in the Court sitting at any place in the State.

(4) The Governor may appoint one of the District Court Judges to be the Chairman of Judges, and may, at any time, revoke his appointment as the Chairman.

(5) The District Court Judges other than the Chairman, have seniority among themselves according to the dates of their respective appointments as District Court Judges, but if two or more of them are appointed on the same day, they have seniority according to the precedence assigned to them by the Governor, at the time he makes the appointments.

Tenure of
office of
District
Court Judges
and oath of
office.

11. (1) The commission of each District Court Judge shall continue in force during good behaviour but Her Majesty may, upon the address of both Houses of Parliament, remove any District Court Judge from his office and revoke his commission.

(2) Each person appointed to be a District Court Judge or an acting District Court Judge shall, before proceeding to discharge the duties of his office, take before the Governor an oath or affirmation in accordance with the form set forth in the Schedule to this Act.

Salaries and
allowances
of the
District
Court
Judges.

12. (1) There shall be paid to the District Court Judges out of the Consolidated Revenue Fund, without further appropriation than this Act, salaries at the following rates—

- (a) to the Chairman, at the rate of fourteen thousand five hundred dollars a year;
- (b) to each of the other District Court Judges, at the rate of thirteen thousand five hundred dollars a year,

and the appropriate rate shall not be diminished during the continuance of the commission of a District Court Judge.

(2) District Court Judges are entitled to such travelling and other allowances or reimbursements, as the Governor may, from time to time, approve.

Leave of
District
Court Judge.

13. A District Court Judge is entitled to the same leave of absence as a Judge of the Supreme Court.

14. (1) The provisions of the Judges' Salaries and Pensions Act, 1950, that relate to pensions apply, with such modifications as circumstances require, to each District Court Judge and to his widow and children after his death in the same manner as they apply to and in respect of a Judge of the Supreme Court appointed as such after the coming into operation of that Act, and to his widow and children, and for the purpose the term "Judge" in that Act includes a District Court Judge.

Application
of Act No. 35
of 1950 to
District
Court
Judges.

(2) If a District Court Judge is appointed a Judge of the Supreme Court his service as a District Court Judge shall be regarded for the purposes of the Judges' Salaries and Pensions Act, 1950, as service as a Judge of the Supreme Court.

15. (1) If a person is a contributor within the meaning of the Superannuation and Family Benefits Act, 1938, at the time he is appointed a District Court Judge, he may continue to be such a contributor notwithstanding his appointment as a District Court Judge.

Application
of Act No. 34
of 1938, to a
person
appointed a
District
Court Judge.

(2) While a person to whom subsection (1) of this section applies, continues to be a contributor under the Superannuation and Family Benefits Act, 1938, that Act applies to the person; and if he ceases to be a contributor—

- (a) on or after he attains the age of sixty years but before he attains the age of sixty-five years he shall be deemed to have elected to retire; or
- (b) on attaining sixty-five years he shall be deemed to have retired,

under that Act on the day he so ceases to be a contributor and a pension is payable to, and in relation to, him without affecting any pension that may be payable to, and in relation to him, under the Judges' Salaries and Pensions Act, 1950.

Application
of Act No. 8
of 1937.

16. The provisions of the Judges' Retirement Act, 1937 apply to a District Court Judge in the same manner as they apply to a Judge of the Supreme Court appointed as such after the coming into operation of that Act.

District
Court Judge
not to
practise as
legal
practitioner.

17. A District Court Judge shall not practise as a practitioner as defined by the Legal Practitioners Act, 1893, or be directly or indirectly concerned in such practice.

Acting
appoint-
ments.

18. (1) Where the Chairman is absent from duty or there is a vacancy in the office of Chairman, all the duties and powers of the Chairman devolve, during the absence or until the filling of the vacancy, upon the senior District Court Judge.

(2) In the absence or inability of the District Court Judge, upon whom the powers and duties referred to in subsection (1) of this section devolve, those powers and duties shall devolve during the absence or inability, upon the District Court Judge who is next in seniority.

(3) Where—

- (a) a District Court Judge including the Chairman is, or is expected to be, absent from duty, the Governor may appoint a person qualified to be appointed a District Court Judge, to act as a District Court Judge during the absence from duty of the first mentioned Judge or until he completes the trial or hearing of any cause or matter that he had entered upon and not completed before that Judge returns to duty, whichever is the later; or
- (b) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires such an appointment to be made, the Governor may appoint a person so qualified to act as a District Court Judge for such period as the Governor thinks fit and specifies in the instrument of appointment.

(4) A person appointed to be an acting District Court Judge under subsection (3) of this section—

- (a) has the same powers and may exercise the same jurisdiction as a District Court Judge; and
- (b) is liable to be removed from office while so acting in the same manner and upon the same grounds as a District Court Judge is liable to be removed from office.

Division 3.—Sittings of the Court.

19. (1) The Court shall be held at Perth in the State and such other places in the State as the Governor may, from time to time, by proclamation determine.

Sittings of
the Court.

(2) The Governor may, by subsequent proclamation, cancel or alter a place so determined for the holding of the Court, or discontinue the holding of the Court at any such place.

(3) A District Court Judge nominated by the Chairman shall attend and hold the Court at any place at which the Governor so determines that the Court be held, on such days and at such times as the Chairman, from time to time, appoints.

(4) Notice of the days on which and the times at which the Court is to be held at any place shall be published in the *Government Gazette*, and the notice shall be exhibited in a conspicuous place in the Court House and in the office of the Registrar of the Court at the place where the Court is to be held, and no other notice thereof is required, unless a District Court Judge otherwise directs.

(5) The Chairman may, from time to time, alter the days and times for the holding of the Court at any place and when any such day is so altered, notice of the intended alteration and the time it is to take effect, shall be exhibited in a conspicuous place in the Court House at that place and in the office of the Registrar at that place.

(6) When the District Court Judge who is to hold the Court does not attend at the time appointed for any sitting thereof the Registrar thereof may open the Court and adjourn it to the following day or such other day as he is directed by that Judge.

Power of the Chairman to direct where Judges to sit and to direct two or more Judges to sit concurrently.

20. The Chairman may direct a District Court Judge to sit at any place where sittings of the Court are held under this Act, and if it appears to the Chairman to be desirable for the more speedy disposal of business, that two or more District Court Judges should hold sittings of the Court or sit in chambers concurrently for the disposal of business at the same place, the Chairman may direct those Judges accordingly.

Power of District Court Judge to sit in chambers.

21. A District Court Judge may sit in chambers at any time and at any place and, subject to the Rules of Court, may exercise in chambers any jurisdiction of the Court except the trial of causes and the hearing of applications for new trials.

Records to be moved on discontinuance of a place where Court is held.

22. When the holding of the Court at any place is discontinued pursuant to section 19, the Governor may, by notice published in the *Government Gazette*, direct the books and other records of the Court at that place, to be removed to such other place at which the Court is held, as is specified in the notice.

Members of the Police Force to attend the Court.

23. Members of the Police Force of the State shall when required attend at the Court sitting at a place where those members are stationed, and shall obey and execute in all cases each lawful writ, summons, warrant, execution, order and command of a District Court Judge presiding at that Court.

Division 4.—Commissioners.

Power to appoint Commissioners and jurisdiction of Commissioners.

24. (1) The Governor may, by general or special commission in Her Majesty's name, assign to any practitioner as defined by the Legal Practitioners Act, 1893, of not less than eight years standing and

practice, or to a Stipendiary Magistrate appointed or deemed to have been appointed under the Stipendiary Magistrates Act, 1957, the duty of hearing and determining at any place where a sitting of the Court is to be held, any causes or matters, on any questions or issues of fact or of law or partly of the one and partly of the other in any cause or matter, depending in the Court, in the exercise of any civil or criminal jurisdiction capable of being exercised by a District Court Judge.

(2) A person to whom a commission is given under this section has, while the commission is in force, all the powers, rights and privileges that are conferred on a District Court Judge by or under this Act, and the commission has effect as if its terms as they exist from time to time were enacted in this Act.

(3) The Governor may, at any time, annul, vary or amend any commission given by him under this section.

Division 5.—Registrar, Deputy Registrars and Bailiffs.

25. (1) The Governor may appoint a Registrar of the Court and Deputy Registrars for the Court and such other officers as may be required for the conduct of the business of the Court throughout the State, and all such officers shall severally hold office under and subject to, the provisions of the Public Service Act, 1904.

Power of Governor to appoint Registrar and other officers.

(2) The person appointed Registrar of the Court shall have his office at Perth and shall act as Registrar for the Court sitting at Perth.

(3) There shall be a Deputy Registrar for the Court sitting at each place outside of Perth.

(4) The office of the Registrar at Perth shall be the principal registry of the Court.

Duties of
Registrar.

26. (1) The Registrar of the Court at each place at which the Court is held shall—

- (a) sign and issue all writs, summonses and warrants issued out of the Court at the place;
- (b) register all records, verdicts and judgments of the Court at that place;
- (c) make lists of all actions, causes and matters for hearing, trial, further hearing or rehearing by the Court at that place;
- (d) discharge all other duties and powers imposed or conferred on them by or under this Act and keep an account of all proceedings of the Court at that place;
- (e) during the sitting of the Court at Perth, act as Deputy Sheriff and exercise the powers and perform the duties of a Deputy Sheriff as prescribed by the Juries Act, 1957;
- (f) take charge of and keep an account of all court fees and fines payable or paid into the Court at that place and of all moneys paid into and out of the Court at that place;
- (g) enter an account of all such fees and fines in a ledger kept by him for that purpose and shall, when required, submit his accounts to be audited by the Auditor General appointed under the Audit Act, 1904, or his officers; and
- (h) do and perform all other acts and duties properly incident to the office of Registrar.

(2) Any entry in the register or any book of the Court held at any place or a copy thereof, bearing the seal of the Court and signed and certified as a true copy by the Registrar of the Court at that place, shall be admitted in all courts and by persons acting judicially as evidence of that entry and of the proceedings referred to by that entry and of the regularity of the proceedings, without further proof and no record of any writ, summons, verdict, judgment, order or decree other than the entry is necessary.

27. (1) Every Registrar may take and administer affidavits, depositions, declarations, oaths and affirmations in relation to any action, cause or matter.

Power of Registrar to administer oaths etc.

(2) Any affidavit to be used in the Court shall and may be sworn before a Registrar or District Court Judge or Commissioner for taking affidavits in the Supreme Court.

(3) Sections 174, 176 and 177 of the Supreme Court Act, 1935 apply to the Court, a Judge thereof or officer of the Court as they apply to the Supreme Court, a Judge thereof or officer of that Court.

28. (1) For the Court there shall be a bailiff, who shall be appointed by the Governor.

Appointment of bailiffs.

(2) The bailiff may, by instrument in writing under his hand, with the approval of the Chairman, appoint a sufficient number of fit persons to assist him and may in like manner, dismiss all or any of them and appoint others in their place.

(3) A person appointed under subsection (2) of this section may be suspended by the Chairman.

(4) The bailiff is responsible for the acts and defaults of the persons appointed under this section to assist him.

29. (1) The death or removal of the bailiff does not invalidate the acts of the persons appointed to assist him and they may continue to act until they are dismissed by the successor to the bailiff.

Power of bailiff's assistants to act after the death or removal of the bailiff.

(2) Persons appointed to assist the bailiff shall receive for their services, while they so act after the death or removal of the bailiff, the same remuneration as they were receiving at the date of the death or removal, and that remuneration shall be paid out of the salary, fees or allowances attached to the office of bailiff.

Duty of
bailiff and
assistants.

30. (1) The bailiff or any person appointed under this Act to assist him, shall if required by a District Court Judge, attend a sitting of the Court, and shall by himself or a person so appointed serve, subject to subsection (2) of this section, all writs and summonses and execute all warrants issued out of the Court; and the bailiff and a person so appointed shall, in the execution of their duties conform to the Rules of Court, and subject thereto to the order and direction of the District Court Judge presiding at the Court.

(2) A writ, summons or other process issued out of the Court may be served by the plaintiff or his solicitor or any person employed by the plaintiff or his solicitor, or by a member of the Police Force of the State.

Bailiff not
required to
hold
auctioneer's
licence.

31. A bailiff or person appointed under this Act to assist him who is duly authorised to execute a writ of *feri facias* issued under the authority of this Act, may in doing so sell land or goods without being the holder of a licence under the Auctioneer's Act, 1921 or any other Act.

Salary of
bailiff.

32. (1) The bailiff may be paid a salary on account of his general duties and is entitled to remove and receive for his own use the prescribed bailiff's fees, unless a District Court Judge in any case otherwise orders.

(2) The bailiff shall, out of those fees, provide for the performance of the duties for which the fees are allowed, and for payment of the persons appointed to assist him.

Bailiff
answerable
for escape
and neglect
to levy
execution.

33. (1) If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, a District Court Judge may, upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce

the attendance of the parties concerned in the same manner in which the attendance of a witness in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained but not exceeding the sum of money for which the execution was issued.

(2) The bailiff is liable to pay the amount ordered to be paid by him under subsection (1) of this section, and if he defaults in so doing upon demand being made therefor, the payment of the amount may be enforced in the manner provided by this Act for enforcing a judgment.

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

Penalty: Two hundred dollars and in addition the offender is liable to pay full costs of action to a person who sues for them.

35. A bailiff shall give security for such sum and in such manner as the Minister orders, for the due performance of his office, and for the due accounting for and payment of moneys received by him under this Act, or which he is liable to pay for misbehaviour in his office. Security by
bailiff.

36. If an action is brought against a person for anything done under a writ or other process issued in pursuance of this Act, the production of the writ or other process under the seal of the Court in the action, is sufficient proof of the authority of the Court prior to the issuing of the writ or other process, and if the plaintiff in the action has a verdict given against him, is non suited or discontinues the action, the defendant shall be allowed full costs as between solicitor and client. Indemnity
to persons
acting under
this Act.

Time for
bringing
action.

37. Subject to section 47A of the Limitation Act, 1935, an action or prosecution shall not be commenced against a person for anything done, or omitted to be done, in pursuance of, or in contravention of, this Act, unless it is commenced within twelve months after the thing was done or omitted to be done.

Service of
process
where bailiff
is party to
action.

38. When a bailiff is a party to any action or matter in the Court, all writs, summonses, warrants, orders and other processes that would in the ordinary course be directed to him, shall be directed to such disinterested person as the Court or a Judge thereof appoints; and the person so appointed may execute and return them.

Division 6.—Representation in the Court.

Representa-
tion in the
Court.

39. (1) A party to an action, cause or other proceeding may appear before the Court in person or by a certificated practitioner, as defined by the Legal Practitioners Act, 1893, or by any person allowed by special leave of the presiding District Court Judge, in any case.

(2) A person who is not such a certificated practitioner is not entitled to claim or recover or receive directly or indirectly a sum of money or other remuneration for appearing or acting on behalf of another person in the Court.

Legal
practitioners
etc. to have
no privilege.

40. No privilege shall be allowed to any legal practitioner as defined in the Legal Practitioners Act, 1893, to exempt him from the provisions of this Act.

Division 7.—Jurors.

Jurors.
Cf. s. 3 Juries
Act, 1957.

41. (1) The persons qualified and liable to serve as jurors at civil and criminal trials and for the assessment of damages respectively under the Juries Act, 1957 are the persons qualified and liable to act as jurors in the Court.

(2) Where the Court is sitting at Perth, the jury books or lists made under the Juries Act, 1957, for the Supreme Court shall be the jury books or lists for the Court and the provisions of that Act apply to the Court as though it were the Supreme Court.

(3) Subject to subsection (2) of this section, the Court sitting at each place other than Perth, shall be a Circuit Court within the meaning of the Juries Act, 1957 when exercising civil jurisdiction, and a Court of Session within the meaning of that Act, when exercising criminal jurisdiction and each place where the Court is sitting shall be a Court town within the meaning of that Act, which shall be read and construed accordingly.

(4) Where the Court is sitting at a place other than Perth, the Registrar of the Court at that place is, by virtue of this subsection, a jury officer.

(5) Subject to this Act, the provisions of the Juries Act, 1957 apply in respect of the Court, a District Court Judge and any criminal or other trial within the meaning of that Act held in the Court as they apply in respect of the Supreme Court and a Judge thereof and any such trial held in the Supreme Court and without limiting the generality of the foregoing, the provisions of that Act relating to the constitution and procuring of juries, the summoning and challenging of jurors, the discharge of juries and the verdicts of juries, extend and apply to the constituting and procuring of juries, the summoning and challenging of jurors, the discharge of juries and the verdicts of juries in the Court.

(6) Where a sitting of the Supreme Court and of the Court coincide wholly or in part at the same place, a jury precept may be issued for summoning jurors to attend both those sittings.

PART III.—JURISDICTION OF THE COURT.

Division 1.—Criminal Jurisdiction and Procedure.

Criminal jurisdiction.

42. (1) Except as provided in subsection (2) of this section, the Court has all the jurisdiction and powers that the Supreme Court has in respect of any indictable offence.

(2) The Court has no jurisdiction to try an accused person charged with an indictable offence, in respect of which offence, the maximum term of imprisonment that can be imposed exceeds fourteen years, or for which the penalty is death.

(3) The jurisdiction conferred on the Court by subsection (1) of this section does not limit or diminish the jurisdiction of the Supreme Court as a Court of criminal jurisdiction.

Change of place of trial.

43. (1) The provisions of section 577 of The Criminal Code apply to a person committed for trial at the Court at any place and to a person against whom an indictment has been presented in the Court.

(2) The express reference in this section to the application of section 577 of The Criminal Code does not exclude the application of the other provisions thereof to and in relation to the Court and in particular to—

- (a) the jurisdiction of the Court;
- (b) the practice and procedure of the Court;
- (c) any person against whom an indictment has been presented in the Court; and
- (d) an appeal by a person convicted on indictment, by the Court.

Practice and procedure of the Court to be same as Supreme Court.

44. In all respects, except as expressly provided by or under this Act, the practice and procedure of the Court as a Court of criminal jurisdiction shall be the same as the practice and procedure of the Supreme Court in like matters.

45. (1) When a person has been committed for trial or sentence to the Supreme Court or an indictment has been presented against a person in that court for an offence triable in the Court, any District Court Judge, if so requested by the Chief Justice of Western Australia, may try or sentence such person, and for that purpose the District Court Judge has the same powers and may exercise the same jurisdiction as if the committal had been to, or the indictment had been presented in, the Court.

Change of trial from Supreme Court to the Court or from the Court to the Supreme Court.

(2) A request of the Chief Justice of Western Australia made under subsection (1) of this section may be made in respect of a particular case or cases or in respect of a specified class or classes thereof.

(3) When a person has been ordered or is deemed to have been ordered to be committed to take his trial for an indictable offence before the Court or an indictment has been presented against a person in the Court, a Judge of the Supreme Court has the same powers and may exercise the same jurisdiction to try such person as if the committal had been to, or the indictment presented in, the Supreme Court.

46. All indictable offences prosecuted in the Court shall be tried by a District Court Judge and a jury.

Jury in criminal cases.

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

Issues of law and fact.

48. (1) The Registrar of the Court in which a person is to be tried on indictment shall be the clerk of arraigns and the Registrar may issue subpoenas for the attendance of witnesses for the trial of that person at the Court.

Power of Registrar to issue subpoenas.

exclusive of ground rent, if any, payable in respect of the land does not exceed the sum of fifteen hundred dollars by the year;

- (e) any action, whether commenced in the Court or the Supreme Court, in which the amount, value or damages sought to be recovered exceeds six thousand dollars, in which the parties thereto agree by a memorandum signed by them or by their respective solicitors, that the Court has power to hear and determine;
- (f) all other actions or matters in respect of which jurisdiction is given to the Court by or under this or any other Act.

51. Where at a trial of any cause in the Court a verdict is returned for or a judgment is given for or the total amount that would have been recoverable if the claimant had not been at fault is found at an amount in excess of six thousand dollars but not exceeding ten thousand dollars, the Court shall find and record the amount of the verdict or judgment or, as the case may be, such total amount and the claimant is entitled to recover the full amount of the verdict or judgment, or as the case may be, of such total amount reduced in accordance with the Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act, 1947, notwithstanding that the amount claimed does not exceed six thousand dollars.

Amount of verdict or judgment in excess of six thousand dollars.

52. In all respects, except as expressly provided by or under this Act, the practice and procedure of the Court as a court of civil jurisdiction including the trial of certain cases with or without a jury, shall be the same as the practice and procedure of the Supreme Court in like matters.

Practice and procedure to be same as Supreme Court.

53. (1) Without affecting the generality of the foregoing provisions of this Act, in all actions, matters and causes within the jurisdiction of the Court, a District Court Judge has for the purposes

Powers and authorities of District Court Judge and officers of the Court.

of this Act, in addition to the powers and authorities conferred upon him by this Act, all the powers and authorities of a Judge of the Supreme Court; and the Registrar, bailiff and other officers of the Court shall in all such actions, matters or causes, discharge any duties that a corresponding officer of the Supreme Court has authority to discharge, either under the order of a Judge of the Supreme Court or under the practice of that Court, and all officers of the Court in discharging those duties, shall conform to the Rules of Court.

Decision as
to amount
or value.

(2) If any question arises as to the amount or value under any of the sections of this Act in relation to the jurisdiction of the Court, the decision of the District Court Judge therein shall be conclusive.

Jurisdic-
tion of
District
Court Judge
in relation
to abscond-
ing debtors.

54. A District Court Judge may, as to any matter within his jurisdiction, exercise all the powers possessed by a Judge of the Supreme Court with respect to the arrest and holding of defendants in actions for the recovery of money or damages and the provisions of sections 63 to 68, inclusive, of the Supreme Court Act, 1935, apply, with such modifications as circumstances require, to the Court, a District Court Judge and the officers of the Court.

Further
powers of
the Court.

55. The Court or a District Court Judge has, as regards any action or matter within its or his jurisdiction for the time being, power—

- (a) to grant, and shall grant, in the action or matter such relief, redress or remedy, or combination of remedies, either absolute or conditional; and
- (b) to make any order that could be made in regard to any action or matter, and shall in each such action or matter give such and the like effect to every ground of defence or counterclaim equitable or legal,

in a full and ample manner as might and ought to be done in the like case by the Supreme Court or a Judge thereof.

56. (1) A judgment may be enforced in the same manner and to the same extent as though it were a judgment of the Supreme Court.

Enforcement
of
judgments.

(2) A judgment debt shall carry interest at the rate of five dollars for every hundred dollars by the year commencing on and from the date of entering up the judgment until the date the judgment is satisfied, and the amount of the interest may be levied under a writ of *fiери facias* on the judgment.

Interest on
judgment.

57. (1) The several rules of law and equity enacted and declared by the Supreme Court Act, 1935, shall, unless express provision is otherwise made in this Act, be in force and take effect in the Court, as far as the matters to which those rules relate are respectively cognisable by the Court.

Certain rules
of law to
apply to the
Court.

(2) Without affecting the generality of subsection (1) of this section, but subject to the express provisions of any other Act, in every action or matter commenced in the Court, law and equity shall be administered according to the provisions of section 25 of the Supreme Court Act, 1935 as though that section were enacted in this Act and in terms made applicable to the Court.

58. (1) Where in an action before the Court any defence or counterclaim of the defendant involves matters beyond the jurisdiction of the Court, that defence or counterclaim does not affect the competence of the Court to dispose of the whole matter in controversy, so far as it relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall, subject to section 51, be given to the defendant upon that counterclaim.

Defences or
counter-
claims in
the Court
and transfers
from the
Court.

(2) In any action to which subsection (1) of this section applies a Judge of the Supreme Court may, if he thinks fit, on the application of any party, order on such terms and conditions as he thinks fit, that the whole action be transferred to the Supreme Court.

Splitting demands abandonment of excess.

59. (1) A plaintiff shall not divide a cause of action for the purpose of bringing two or more actions in the Court.

(2) A plaintiff who has a cause of action for more than the amount for which a writ of summons may be issued under this Act, may abandon the excess by stating the amount abandoned in the writ.

(3) Where the plaintiff so abandons the excess he may, on proving his case, recover to an amount not exceeding the limit specified by this Act and the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action and entry of that judgment shall be made accordingly.

Suing on separate security a separate cause of action.

60. Where a defendant has given two or more bills of exchange, promissory notes, bonds or other securities, for a debt or sum originally exceeding six thousand dollars, the plaintiff may sue separately upon each of those securities not exceeding six thousand dollars, as forming a separate cause of action.

Not necessary to state facts establishing jurisdiction.

61. It is not necessary in any case that the facts necessary to give jurisdiction should appear by recital, averment or otherwise upon any proceeding in or issuing out of the Court.

Mode of enforcing orders by the Court.

62. The Court or a Judge thereof has and may exercise the same power and authority for compelling obedience to, and for punishing disobedience of, any judgment as the Supreme Court or any Judge thereof may exercise for compelling obedience to or punishing disobedience of any judgment or order given or made by the Supreme Court.

63. (1) If a person—

Contempt of
the Court.

- (a) wilfully insults a District Court Judge, any juror, any Registrar, the bailiff, clerk or officer of the Court during his sitting or attendance in Court or any District Court Judge in going to or returning from the Court;
- (b) wilfully interrupts proceedings of the Court;
- (c) having been duly summoned to appear before the Court and having been paid or tendered a reasonable sum for travelling expenses and subsistence, refuses or neglects without sufficient cause to appear or to produce any books, deeds, papers or writings required by a summons to be produced;
- (d) being summoned or examined as a witness in any cause or matter or being present in the Court and required to give evidence, refuses to be sworn or answer any lawful questions;
- (e) is, in the opinion of the District Court Judge before whom the person is appearing as a witness, guilty of wilful prevarication;
or
- (f) misbehaves in the Court,

the District Court Judge concerned may direct the apprehension of the person and if he thinks fit may by warrant under his hand and sealed with the seal of the Court commit the person to the prison nearest to the Court for any time not exceeding one month, or may impose on the person a fine not exceeding one hundred dollars, and in default of immediate payment thereof may so commit the person to prison for any time not exceeding one month unless the fine is sooner paid.

(2) A fine or commitment under this section does not exempt a person from obeying any summons to appear before the Court or to produce therein any books, deeds, papers or writings.

PART IV.—COSTS.

Costs of
action or
proceeding.

64. (1) Except as hereinafter provided in this Act, and until Rules of Court are made with respect thereof, the costs of any action or proceeding shall be in accordance with the appropriate scales of costs for the time being in force in the Supreme Court and shall be paid by or apportioned between the parties in such manner as the District Court Judge directs and in default of such a direction shall abide the event.

(2) The costs may be recovered in like manner as a debt adjudged by the Court to be paid.

(3) Subject to this Act, a District Court Judge has the same power in relation to the payment of costs by any party as a Judge of the Supreme Court has.

Costs where
the Court
has no
jurisdiction.

65. Where an action or matter is brought in the Court over which the Court has no jurisdiction, the District Court Judge shall order the action or matter to be struck out, and the Court has power to award costs to the same extent, and recoverable in the same manner, as if the Court had jurisdiction therein and the plaintiff had not appeared in Court or had so appeared and failed to prove his demand or claim.

Fees to legal
practitioners.

66. Until Rules of Court are made in respect thereof, the fees to be allowed to legal practitioners as defined in the Legal Practitioners Act, 1893, for appearing or acting on behalf of a party to an action or other proceeding, and the expenses to be paid to witnesses shall be according to the scale, for the time being in force, in the Supreme Court.

Costs
between
parties to be
on Supreme
Court scale.

67. (1) Except as hereinafter provided in this Act and subject to the Rules of Court, all costs and charges as between the parties shall be taxed by the Registrar of the Court at the place where the action or matter to which they relate was tried or heard, but the taxation by the Registrar may be reviewed by the District Court Judge on the application of either party.

(2) No costs or charges shall be allowed that are not sanctioned by the scale of costs in force, for the time being, in the Supreme Court.

68. Costs and charges of proceedings as between solicitor and client may be taxed by the taxing officer of the Supreme Court.

Costs and charges to be fixed.

PART V.—COMMENCEMENT OF ACTION.

69. (1) The Court has jurisdiction throughout the State.

Place for commencement of action.

(2) An action shall be commenced in the Court sitting at the place nearest to where—

- (a) the defendant or one of two or more defendants, as the case may be, resides or carries on business;
- (b) the cause of action or claim arose either wholly or in some material part; or
- (c) a debt or sum of money is made payable under an engagement or promise in writing given by the defendant.

70. (1) If a person served with a writ of summons in an action fails to duly file a defence or fails to file together with the defence a notice that he claims that the action was not commenced in the Court sitting at the place prescribed in accordance with section 69, the action shall be deemed to have commenced in the Court at the place so prescribed.

Objector to commencement of action in the Court sitting at a certain place.

(2) Where a notice referred to in subsection (1) of this section is so filed, a District Court Judge may upon application in chambers determine whether the action was commenced as prescribed in that subsection.

(3) On the hearing of the application the District Court Judge may make such order as he thinks fit.

PART VI.—REMITTING AND TRANSFERRING ACTIONS AND MATTERS.

Transfer of actions and matters.

71. Where an action or matter is commenced in the Court sitting at a place that should have been commenced in the Court sitting at another place, the Court or a District Court Judge may order its removal to be tried or heard by the Court sitting at that other place, or may so order that the action or matter be tried or heard in the Court sitting at the place in which it has been commenced.

Power of District Court Judge to change venue.

72. Where a District Court Judge is satisfied that an action which is listed to be heard in the Court sitting at a place can be more conveniently or fairly tried in the Court sitting at another place, he may order, on such terms and conditions as he thinks fit, the action to be sent for trial to the Court sitting at that other place.

Remitting action to the Court.

73. When an action or matter is brought in the Supreme Court that might have been brought in the Court without the consent of the defendant—

- (a) the defendant may, at any time, apply to the Supreme Court or a Judge thereof for an order remitting the action or matter to the Court sitting at such place as the order specifies, and the Supreme Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case it is advisable that the action or matter should be tried in the Supreme Court; or
- (b) the Supreme Court or a Judge thereof, without any such application, may make such an order, if it or he thinks fit.

Remitting of action to Local Court.

74. (1) When an action is brought in the Court that might have been brought in a Local Court without the consent of the defendant—

- (a) the defendant may, at any time, apply to the Court or a Judge thereof, for an order remitting the action to the appropriate

Local Court sitting at such place as is specified in the order, and the Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case, it is advisable that the action should be tried in the Court; or

- (b) the Court or a Judge thereof may, without any such application, make such an order if it or he thinks fit.

(2) Notwithstanding paragraph (c) of section 78 so far as it relates to costs, when an action is brought in the Court that might have been brought in a Local Court without the consent of the defendant, the plaintiff is not entitled to recover a greater sum by way of costs than he could have recovered had the action been brought in a Local Court, unless the District Court Judge hearing the action certifies—

- (a) in the case of an action founded in tort, that in his opinion it was proper to bring the action in the Court instead of the Local Court; and
- (b) in any other case, that by reason of some important principle of law being involved, or of the complexity of the issues, or of the facts, the action was, in his opinion, properly brought in the Court.

75. When an action is brought in a Local Court that might have been brought in the Court, or where any defence or counterclaim of the defendant in an action brought in a Local Court involves matter beyond the jurisdiction of that Court but such matter is within the jurisdiction of the Court, the defendant may, at any time, apply to the Court or a Judge thereof for an order remitting the action to the Court sitting at such place as is specified in the order and the Court or Judge thereof shall make an order accordingly, unless it or he considers that under the circumstances of the case, it is advisable that the action should be tried in the Local Court.

Remitting of
action from
Local Court.

Remitting
action or
matter to
Supreme
Court.

76. A Judge of the Supreme Court may, upon the application of any of the parties to an action or matter brought in the Court, if he thinks fit, order that the action or matter be tried or heard in the Supreme Court sitting at such place as is specified in the order.

Remitting of
certain
actions or
matters to
Supreme
Court.

77. Where it appears to a District Court Judge that any action or matter brought before the Court ought from its nature, or magnitude, or by reason of the question of law involved to be heard and determined by the Supreme Court, he may make an order, remitting the action or matter to the Supreme Court.

Proceedings
after order
to remit.

78. Upon an order being made under this Act remitting any action or matter from one court to another court—

- (a) the action or matter shall be carried on, heard and taken in the court to which the action or matter is so remitted, at the place specified in the order, and as if the action or matter had been originally brought in that court;
- (b) the appropriate officer of the court from which the action or matter is remitted shall transmit to the appropriate officer of the court to which the action or matter is remitted, a copy of the order together with a copy of the writ or other document by which the matter was commenced and of the pleadings and all other documents filed in the firstmentioned court in the action or matter;
- (c) the order may include such terms and conditions, including the payment of costs by any party, as the court or the Judge making the order, thinks fit.

PART VII.—APPEALS, CERTIORARI, PROHIBITION
AND MANDAMUS.

79. (1) A party to an action or matter who is dissatisfied with—

Appeals to
the Full
Court from
judgment of
the Court.

- (a) a final judgment, may appeal from that judgment to the Full Court constituted under the Supreme Court Act, 1935;
- (b) a judgment that is not a final judgment or an order remitting any action or matter from one court to another, may by leave of the Supreme Court or a Judge thereof, appeal to such Full Court,

notwithstanding that the action or matter to which the final judgment or judgment relates may have been brought in the Court by consent as provided in this Act.

(2) An appeal under this section shall be made in the same way as an appeal from a judgment or order of the Supreme Court or a Judge thereof, may be made to the Full Court, and in all respects the practice and procedure of the Full Court in the appeal shall be the same as though the appeal were an appeal to the Full Court from a judgment or order of the Supreme Court or a Judge thereof.

(3) The Full Court has jurisdiction to hear and determine the appeal accordingly.

(4) Nothing in this section authorizes a party to appeal to the Full Court against a decision of the Court—

- (a) given upon a question as to the value of any real or personal property for the purpose of determining the jurisdiction of the Court under this Act; or
- (b) on the ground that the proceedings might or should have been taken at any other place where the Court was sitting.

three days before the date fixed for the hearing of the cause or matter, the Judge of the District Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some other order respecting the costs.

83. (1) When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a District Court Judge or the Court, the District Court Judge—

Prohibition.

- (a) shall not be served with notice;
- (b) shall not, except by order of a Judge of the Supreme Court, be required to appear or be heard on the application; and
- (c) shall not be liable to any order for the payment of costs thereof,

but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a District Court Judge.

(2) Notice of the application referred to in subsection (1) of this section shall be given to or served upon the same parties as in the case of an appeal against a judgment or an order made or refused by a District Court Judge in a matter within his jurisdiction.

84. (1) No writ of *mandamus* shall issue to a District Court Judge or any officer of the Court for refusing to do any act relating to the duties of his office; but a party requiring the act to be done may apply to the Supreme Court or a Judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the District Court Judge or officer of the Court, and also the party to be affected by the act, to show cause why the act should not be done.

Rule or
summons to
take place
of
mandamus.

(2) If after the service of the rule or summons referred to in subsection (1) of this section, good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the District Court Judge or the officer of the District Court, upon being served with the rule or order, shall obey it under pain of attachment.

(3) In any event the Supreme Court or a Judge thereof may make such order with respect to costs as the Supreme Court or a Judge thereof thinks fit.

Notice to be given of writ of *certiorari* or prohibition on *ex parte* application.

85. When a writ of *certiorari* or of prohibition addressed to the Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the appropriate Registrar of the Court, and give notice to the other party or parties to the cause or matter to which the writ relates that it has been issued, at least three days before the date fixed for the hearing of the cause or matter to which the writ relates, a District Court Judge or the Court may order the party who obtained the writ to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some other order respecting the costs.

PART VIII.—PRACTICE AND PROCEDURE AND RULES OF COURT.

Power to deal with action or matter at another place.

86. When any action or matter has been heard at a sitting of the Court held at any place the Court may pronounce judgment or give further hearing or consideration to the action or matter at a sitting of the Court held at another place being a place at which the Court is empowered to sit.

Procedure and practice.

87. (1) Subject to this Act, the practice and procedure of the Court shall be governed by the Rules of Court, and until provision is made by Rules of Court or where no special provision is

contained in the Rules of Court, the Rules of Court of the Supreme Court for the time being in force, so far as applicable, apply to the Court.

(2) A reference in any other provision of this Act to Rules of Court shall, unless the context otherwise requires, be read as including a reference to the Rules of the Supreme Court as applied by this section.

88. (1) The District Court Judges, for the time being, or a majority of them, may make rules, not inconsistent with this Act, for regulating and prescribing the practice and procedure, including the method of pleading, to be followed in the Court (including the practice and procedure to be followed in the offices of the Court) and for regulating and prescribing all matters and things incidental to or relating to any such practice and procedure (including the manner in which and the time within which, any applications that under this Act or any other Act are to be made to the Court, shall be made) or necessary or convenient to be prescribed for the conduct of any business of the Court.

Rules of
Court.

(2) In particular the Rules of Court may provide—

- (a) for regulating the sittings of the Court, and of the Judges thereof whether sitting in Court or in chambers;
- (b) for regulating any matters relating to the costs of proceedings in the Court;
- (c) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings, or on any application in connection with, or at any stage of, any proceedings;
- (d) for the service and execution of the process of the Court including the manner in which and the extent to which the process of the Court may be served out of the jurisdiction of the Court;

- (e) for the execution of the judgments of the Court;
- (f) with the concurrence of the Treasurer, for the fees and percentages to be taken in the Court, or in any office connected with the Court, or in which any business connected with the Court is conducted, or by any officer attached to the Court, including the fees and poundages to be demanded, taken and received by the bailiff and his officers in the execution of any process delivered to the bailiff.

(3) Subject to section 32 the fees and percentages referred to in paragraph (f) of subsection (2) of this section shall be paid into the Treasury, and carried to the Consolidated Revenue Fund.

Rules to be
published
and laid
before
Parliament.
Vide Act No.
30 of 1918,
s. 36.

89. (1) Rules of Court made under this Act—

- (a) shall be published in the *Gazette*;
- (b) take effect from the date of publication or from a later date to be specified in the rules;
- (c) shall be laid before each House of Parliament within six sitting days of such House next following the publication thereof.

(2) If either House of Parliament passes a resolution, of which notice has been given at any time within six sitting days after the rules have been laid before it, disallowing any rule or part thereof, that rule or part thereof thereupon ceases to have effect, but without affecting the validity of any proceeding taken or of anything done thereunder in the meantime.

(3) Where a resolution to which subsection (2) of this section refers has been passed, notice of the resolution shall be forthwith published in the *Gazette*.

90. (1) Nothing in this Act and, subject to ^{Saving.} subsection (2) of this section, nothing in the Rules of Court affects the mode of giving evidence by the oral examination of a witness in a trial with a jury, or the rules of evidence, or the law relating to jurors or juries.

(2) Nothing in this section—

- (a) shall prejudice the operation of any Rules of Court made in pursuance of the power conferred by this Act to make Rules of Court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given; or
- (b) shall affect the power of the Court for special reasons to allow depositions or affidavits to be read.

SCHEDULE.

OATH.

S. 11.

I, _____ do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second Her Heirs and Successors, according to law in the office of a Judge of The District Court of Western Australia, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill. So help me God !

AFFIRMATION.

I, _____ do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second Her Heirs and Successors according to law in the office of a Judge of The District Court of Western Australia, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or illwill.