

COURTS OF SESSION.

12° GEO. V., No. XXIV.

No. 24 of 1921.

AN ACT to provide for the establishment of Courts of Session with Criminal Jurisdiction, and to make better provision for the local administration of the Criminal Law, and for other incidental purposes.

[Assented to 20th December, 1921.]

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

Short title and commencement.

1. This Act may be cited as the *Courts of Session Act*, 1921, and shall come into operation on a day to be fixed by proclamation.

Interpretation.

2. In this Act, subject to the context,—

“Attorney General” includes, in case of the absence of the Attorney General or of his inability to perform the duties of his office or of a vacancy in the office, any Minister of the Crown or other person whom the Governor may see fit (as he is hereby empowered) to appoint to exercise the powers of the Attorney General under this Act;

“Code” means the Criminal Code;

“Court” means a Court of Session;

“District” means a Magisterial District;

“Division” means a Sessions Division;

“Judge” means a Judge of the Supreme Court, and includes any Commissioner appointed under the Supreme Court Act, 1880;

“Judgment” includes conviction, sentence, warrant and order;

“Sheriff” means the Sheriff of Western Australia, and includes any deputy or under sheriff or any person appointed by the Sheriff by writing under his hand and seal to act for him or in his stead;
 “Supreme Court” includes a Judge.

3. The Acts set out in the first schedule hereto are repealed to the respective extents specified therein.

Repeal.
First Schedule.

Sessions Divisions.

4. The Governor may, by proclamation, subject to this Act—

Sessions Divisions.

- (a) constitute any Magisterial District, or two or more Districts together, a Sessions Division for the purposes of this Act;
- (b) declare the name by which any Division shall be known;
- (c) revoke or vary any proclamation made under this section;
- (d) abolish any Division.

Provided that the Districts of Perth, Swan, and Fremantle shall, for the purposes of this and the next succeeding section, be deemed to constitute together one Magisterial District: And provided, also, that the District of East Kimberley and the District of West Kimberley shall, each by itself, constitute one Division under this Act, and shall be so proclaimed accordingly; but nothing in this section shall be deemed to prevent the alteration (subject to the next succeeding section) of the boundaries of any District.

See No. 11 of 1905,
Sec. 2.

5. It shall not be lawful for any Magisterial District to be divided for the purposes of this Act so that part thereof shall be in any Division and part not in such Division, and no proclamation shall be made under the Magisterial Districts Act, 1886, which would have the effect of contravening this provision unless at the same time provision shall be made to obviate such contravention.

Magisterial Districts
not to be divided
for the purposes of
this Act.

Courts of Session.

6. The Governor may, by proclamation,—

Courts of Session.

- (a) establish for any Division named therein a Court of Session and assign a name to the Court;
- (b) revoke any proclamation made under this section.

Appointment of
Chairman of Court.

7. (1) The Governor shall appoint a Chairman of each Court.

(2) The same person may be appointed Chairman of two or more Courts.

(3) A Chairman must be a Police or Resident Magistrate.

(4) The Governor may appoint any Police or Resident Magistrate to be Deputy Chairman of any Court or of two or more Courts, and such Deputy may, in the case of the sickness or of the absence from any cause of the Chairman from any sitting of the Court, act as Chairman and exercise all the powers and perform all the duties of such Chairman.

Constitution of
Courts.

8. (1) Every Court shall be constituted of and held before—

(a) the Chairman; or

(b) the Chairman and any one or more Justice or Justices; or

(c) a Judge acting under the provisions hereinafter contained.

(2) When a Judge is present and acting at any sitting of the Court, neither the Chairman nor any Justice shall have power to act thereat.

(3) No Justice shall be entitled to sit in any Court of any Division unless he is a Justice for the State or of some District which is comprised in or constitutes the Division.

(4) No Justice shall take part in any decision unless he has been present during the whole of the hearing.

(5) In the event of any disagreement between the members of the Court, the opinion of the majority shall prevail; but if the members are equally divided, the opinion of the Chairman shall prevail.

Appointment of
Clerk.

9. The Governor may appoint any person, being a clerk of petty sessions, to be the Clerk of the Court of any one or more divisions.

Abolition of Courts.

10. A Court of a Division shall be deemed to be abolished and shall cease to exist when—

(a) the Division is abolished; or

(b) the proclamation establishing the Court is revoked.

11. Every Court established under this Act shall be a Court of Record and shall have and use a seal bearing a device or impression of the Royal Arms within an exergue or label surrounding the same and with the name of the Court inscribed, and such seal shall be in the custody of the Clerk.

Courts to be Courts of Record, Seal.

12. (1) It shall be lawful for the Supreme Court at any time on application made by or on behalf of the Attorney General to issue a writ according to the form in the second schedule to this Act directed to the Chairman and Justices of any Court of Session, commanding them to reserve for trial and determination by a Judge such indictments and matters triable or determinable at any specified sittings of the Court as may be mentioned in the writ, and also any other indictments and matters triable or determinable at the same sittings which a Judge shall direct to be so reserved; and any writ so issued shall be of the same validity as if it were enacted in the body of this Act; and any Judge acting pursuant to any such writ shall have all the powers of the Court of Session, and shall have and may exercise, in respect of any indictment or matter that may come before him, and the trial and disposal thereof, such powers and privileges as he would have if sitting and acting in the Supreme Court.

Power of Supreme Court to order cases in Courts of Session to be tried by a Judge.
Second Schedule.

Provided that a Judge may, if he shall think fit, order that any indictment or matter reserved pursuant to any writ issued hereunder shall be heard and determined as if it had not been so reserved and were not affected by the writ, and it shall be so heard and determined accordingly.

(2) Any such writ may be issued on the order of a Judge in Chambers, and the Judge's fiat shall be sufficient authority to the Registrar of the Supreme Court to sign and issue the writ under the Seal of the Supreme Court.

(3) A Commissioner may be empowered by Commission issued by the Governor to exercise all or any of the powers of a Judge under any writ issued or to be issued under this section, and every such Commission shall be deemed to be authorised by and issued under the Supreme Court Act, 1880.

Jurisdiction.

13. The Court of a Division shall be a Court of Oyer and Terminer and Gaol Delivery with a jurisdiction territorially co-extensive with the Division and shall accordingly (subject as hereinafter provided) have power to deal on indictment

Local jurisdiction.

with offences and the trial and punishment of offenders to the extent indicated in section five hundred and seventy-five of the Code and in the other provisions of the Code relating to the powers of Courts of criminal jurisdiction.

Limitations on jurisdictions of Courts.

14. No Court of Session shall, except when it is constituted of and held before a Judge, have jurisdiction—

(a) in the case of any such offence as is defined in Chapter VI., VII., VIII., X., or XI. of the Code; or

(b) in any case of murder or wilful murder.

Power of Supreme Court to amend order made in excess of the jurisdiction of Court of Sessions.

15. (1) In case any judgment of a Court of Session shall be questioned before the Supreme Court as being in excess of jurisdiction, the Supreme Court may, if of opinion that such excess exists, substitute such judgment as the Court of Session might have given and the Supreme Court shall think just.

(2) The power hereby given may be exercised in whatever manner the question is raised before the Supreme Court, and the substituted judgment shall have effect as if originally given by the Court of Session.

Power of Supreme Court to order removal of indictment to Court which would not have jurisdiction.

16. (1) When a person has been committed for trial for an indictable offence at any Court of Session, or an indictment has been presented against any person in such a Court, then the Supreme Court may (whether the person has been admitted to bail or not), upon good cause shown and on the application of the Crown or of the accused person, order that the trial shall be held in and before some other Court of Session at such sittings or time as the Supreme Court may fix, notwithstanding that such other Court of Session would not, but for the order, have any jurisdiction.

(2) When an order is made under the provisions of this section the consequences are the same in all respects and with regard to all persons as if the accused person had been lawfully committed for trial or the indictment had been lawfully presented against him at or in such other Court, and if he has been admitted to bail the recognisances of bail are to be deemed enlarged in respect of time and place accordingly.

(3) The recognisances of any person who is bound to attend as witness shall be deemed to be enlarged in like manner; but reasonable notice of the time and place at which his attendance is required must be given to any such person, otherwise his recognisance cannot be forfeited.

Sittings of Court.

17. (1) The Governor may by proclamation—

Sittings of Court.

- (a) appoint the place within a Division where the sittings of the Court of that Division shall be held;
- (b) allow the Court to sit temporarily at any place within the Division other than the place so appointed;
- (c) fix the times at which periodical sittings of the Court shall be held;
- (d) revoke or vary any proclamation made under this section.

18. A special sitting of the Court shall be held at any time at which the Attorney General shall direct such a sitting to be held.

Special sittings.

19. If, at the time appointed for any sitting, neither a Judge nor the Chairman is present, the Clerk may adjourn the Court.

Adjournment.

Trial and Procedure.

20. (1) Trials on indictment in Courts of Session shall be by jury, and shall be conducted in the same manner as nearly as may be as trials in the Supreme Court.

Trial.

(2) The Clerk, or in the absence of the Clerk some person appointed by the Judge or Chairman, shall be Clerk of Arraignment:

Provided that, when the Court is held before a Judge, the Associate of the Judge or of any other Judge shall, if the Judge so directs, act as Clerk of Arraignment.

21. (1.) The several lists of persons qualified and liable to serve on juries under the Jury Act, 1898, transmitted from each of two or more Districts which are comprised in a Sessions Division shall be transcribed by the Sheriff into one jurors' book for the Division as if it were a Magisterial District; and such jurors' book shall be the jurors' book for the summoning of every jury for the trial within the Division in the Supreme Court or in a Court of Session of persons charged upon indictment with offences, or for the trial within the Division of issues of fact in any action or proceeding in the Supreme Court or for the assessment of damages, whether before a Judge or before the Sheriff.

Jurors' books for divisions.

(2.) In the case of a Division which is constituted of one District, the jurors' book for the District shall be the jurors' book for the summoning of every jury for any such trial or assessment as aforesaid within the Division.

(3.) Whenever the Governor establishes any Division, he may, by order in council, make such provision as he shall deem expedient for the compilation of the first jurors' book for the Division, and any jurors' book compiled pursuant to such order in council shall be and continue in force for the current year and until the jury lists for the year next ensuing shall be transcribed by the Sheriff into the jurors' book.

Precept for
summoning jury.

22. (1) All jurors for the trial of persons on indictment at any sitting of a Court of Session shall be summoned by virtue of a precept under the hand of the Chairman directed to the summoning officer.

(2) Such precept shall have effect as a precept issued under the Jury Act, 1898, and the Clerk shall be the summoning officer: Provided that in the Divisions of East and West Kimberley the precept shall be *mutatis mutandis* according to the form in the first schedule to the Kimberley General Sessions Act, 1886, and shall be directed to a constable, who shall on receipt thereof take such steps as are prescribed by sections six and eleven of that Act.

Application of the
Kimberley District
General Sessions
Act, 1886.

23. Subject to section *thirty-three* of this Act, the provisions of the Kimberley Districts General Sessions Act, 1886, shall apply to and in respect of the East and West Kimberley Districts when proclaimed as Divisions for the purposes of this Act and to and in respect of the Court established in each Division and the proceedings therein.

Sheriff to furnish
calendar of
prisoners and to
bring up prisoners
for trial.

24. (1) The Sheriff shall deliver or cause to be delivered to the Judge or Chairman presiding in every Court a calendar of all prisoners in custody for trial at such Court (whether the prison in which such prisoners are confined is or is not within the Division), and shall bring up or cause to be brought up every such prisoner to the Court, there to be dealt with according to law.

(2) After a prisoner has been brought to the Court, and until he is tried, he may be kept in such custody as the Sheriff may from time to time appoint.

Enforcement of
fines, etc.

25. (1) When the decision of a Court adjudges the payment of a pecuniary penalty or compensation or sum of money

or costs, then such decision may be enforced in such manner and by such means as a similar decision of Justices is enforceable, and shall for that purpose be deemed an order made by Justices, and the relative provisions of the Justices Act, 1902-1920, shall apply thereto accordingly.

(2) For the purposes of enforcing such decision the Chairman shall have power to make such subsidiary orders, and to sign and issue such warrants, as Justices might make and sign in a similar case.

(3) The provisions of this section shall be without prejudice to any other method of enforcement.

26. A Court may make and execute such orders, warrants, and other process as may be necessary for enforcing the judgments of the Court or enabling its proceedings to be carried on.

Power to issue process to enforce judgments, etc.

27. The process and judgments of a Court shall run and may be executed anywhere in the State, and the Sheriff and all police officers, prison officials and other officers shall obey, execute, and enforce the judgments and process of any Court so far as they may be respectively required by the Court so to do.

Process and judgments to have effect throughout the State.

28. A Court having power to commit a person to prison may commit him to any prison notwithstanding that such prison is outside the Court's Division.

Court may commit to any prison.

29. (1) A person committed for trial at the Court of any Division may be committed to and held in a prison which is outside the limits of the Division.

Court may try person imprisoned outside Division.

(2) It shall be no objection to the trial of any person by a Court that such person is confined or held in a prison outside the Court's Division.

30. The Judges of the Supreme Court or a majority of them shall have such power of making general rules for regulating the practice and procedure of Courts of Session as they have in respect of the Supreme Court.

Power of Judges to make rules.

Miscellaneous.

31. The Criminal Record Book of every Court of General or Quarter Sessions which was held at any place within a Division shall be handed over to the Clerk of the Court of Session of that Division, and every record or entry therein

Records and proceedings of Quarter Sessions to be transferred to Courts of Session.

of a judgment given or purporting to have been given by or in any such Court as aforesaid shall be deemed to be the record of a judgment of a duly constituted Court and shall become a record of the said Court of Session, and every judgment so recorded shall have effect and may be enforced accordingly, and all proceedings pending in such Court of General or Quarter Sessions shall be transferred to and continue in such Court of Session.

Transfer of records and proceedings on abolition of Court.

32. When a Court is abolished, all proceedings pending therein shall be transferred to and continue in such other Court as the Governor may direct, and all records of the abolished Court shall be transferred to and become records of such other Court.

References to Courts of Quarter Sessions to be deemed to be references to Courts of Session.

33. Any references in any other Acts to Courts of General or Quarter Sessions or any officers thereof or the Districts for which the same are established shall hereafter be construed as being references to Courts of Sessions and the corresponding officers thereof and the Divisions for which the same are established respectively.

Power of Courts of Session to deal with appeals from justices.

34. (1.) Notwithstanding anything in the Justices Act, 1902-1920, or any other enactment, an appeal under section one hundred and eighty-three of that Act may, if the decision appealed from was given in a Sessions Division, be made to the Court of such Division.

(2.) An order to review a decision under the said Act may, if the decision was given in a Sessions Division, be made returnable before the Court of that Division, and the appeal shall thereupon be deemed to be transferred to such Court of Session and may be disposed of therein accordingly.

(3.) Any appeal under the said Act, whether direct or by way of order to review, pending in a Court of Session, may on the order of a Judge be removed into the Supreme Court, and any such appeal pending in the Supreme Court may be removed into any Court of Session.

Such order may be made whenever it appears to the Judge to be just and convenient to make it, and whether the appeal was originally instituted in the Court from which it is proposed to remove it or not.

(4.) The jurisdiction of a Court of Session under this section shall be exercised by a Judge only.

35. Section nine of the Circuit Courts Act, 1897, is hereby amended by the substitution, in the third line thereof, of the word "may," for the word "shall."

Amendment of section nine of the Circuit Courts Act, 1897.

36. No judgment or other proceeding before any Court shall be quashed or set aside or adjudged insufficient for want of form.

Proceedings not to be quashed for want of form.

37. When any judgment of a Court of Session comes before the Supreme Court in any proceeding whatsoever, then if it shall appear that the evidence before the Court of Session was sufficient to support the judgment in substance the Supreme Court may amend the judgment or any proceeding on which the same is founded by correcting or supplying any error, mistake, or omission therein or therefrom in such manner as shall be just, and the judgment shall have effect and be deemed to have had effect as so amended.

Power of amendment of proceedings by Supreme Court.

38. (1.) When a person is alleged to be guilty of contempt of any Court committed in the face of the Court or in the hearing of the Court the Court may, by verbal order, direct him to be arrested and brought before it forthwith, or the presiding Judge or Chairman may issue a warrant for the arrest of the accused person.

Contempt of Court.

(2) When the accused person is brought before the Court the Court shall cause him to be informed orally of the nature of the contempt with which he is charged, and shall require him to make his defence to the charge, and shall, after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge, and shall make such order for the punishment or discharge of the accused person as is just.

(3) The accused person shall be detained in custody until the charge is disposed of, unless the Court allows him to be discharged on bail.

(4) Provision may be made by rules of court for dealing with contempt in other cases.

(5) Punishment for contempt may be by fine or imprisonment, or both, at the discretion of the Court, but no fine exceeding fifty pounds and no imprisonment exceeding three weeks shall be imposed except by a Judge.

Section 3.

FIRST SCHEDULE.

Acts repealed.	Extent of Repeal.
9 Vict. No. 4. An Ordinance to make provision for the trial of criminal offences at Albany and other remote Districts of the Colony of Western Australia	The whole.
12 Vict. No. 2. An Ordinance to make perpetual the above mentioned Ordinance	The whole.
The Kimberley Districts General Sessions Act, 1886	Sections 2 and 3.
The Jury Act, 1898	Sections 12 and 17.

Section 12.

SECOND SCHEDULE.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To

The Chairman and Justices of the (*here insert the name of the Court*).

GREETING :

We, being willing for certain reasons that all and singular the indictments and matters hereinafter mentioned be heard and determined before a Judge of Our Supreme Court of Western Australia, do command you and every of you that you reserve for trial before a Judge such indictments and matters triable or determinable at the sittings of the Court of Session commencing on the _____ day of _____ 19____ as are specified in the indorsement hereon and such other indictments and matters (if any) triable or determinable or which may become triable or determinable at the aforesaid sittings as a Judge of Our said Supreme Court may direct to be so reserved : And We require you to bring and have before any Judge of Our said Supreme Court attending at the said Court of Session during the said sittings thereof all and singular the indictments and matters so reserved as aforesaid and all things touching the same, subject to any such exception as a Judge may think fit to direct, in order that the Judge may hear and determine the same and may cause to be done thereon what of right and according to the law of Our State of Western Australia ought to be done.

[L.S.]

Witness _____, Chief Justice
of Western Australia, at Perth, the _____ day of _____
in the year of our Lord One thousand nine hundred and _____

Registrar of the Supreme Court
of Western Australia.

(To be indorsed.)

By order of Mr. Justice.....
At the instance of His Majesty's Attorney General (*or as the case may be*)
Indictments and matters referred to herein.

(Here specify indictments and matters.)