

DISTRICT COURTS (AMENDMENT) ACT.

Act No. 20, 1955.

An Act to make further provision with respect to the jurisdiction of District Courts; to extend the area within which bailiffs of District Courts may discharge certain functions; for these and other purposes to amend the District Courts Act, 1912, the Small Debts Recovery Act, 1912, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 26th April, 1955.]

Elizabeth II,
No. 20, 1955.

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:—

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1955.

Short title,
citation
and com-
mencement.

(2)

District Courts (Amendment) Act.

No. 20, 1955.

(2) The District Courts Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the District Courts Act, 1912-1955.

(3) The Small Debts Recovery Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Small Debts Recovery Act, 1912-1955.

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

Amend-
ment of Act
No. 23, 1912.

2. The District Courts Act, 1912, as amended by subsequent Acts, is amended—

Subst.
sec. 26.

(a) by omitting section twenty-six and by inserting in lieu thereof the following section:—

Appointment
of bailiffs
and
bailiff's
assistants.

26. (1) For every District Court there shall be one or more bailiffs.

(2) Where the Governor by proclamation in the Gazette so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place or places specified in the proclamation shall be a bailiff of the District Court or District Courts holden at that place or those places and of the District Court or District Courts holden at such other place or places, if any, as may be specified in the proclamation.

The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this subsection.

(3) The bailiff or bailiffs for each District Court, other than the bailiff or bailiffs referred to in subsection two of this section, shall be appointed by the judge by order under his hand. Any person so appointed may be removed from office by the judge by like order.

The

The power conferred by this subsection may be exercised by the judge notwithstanding that there may already be a bailiff or bailiffs of the District Court by virtue of any proclamation made under subsection two of this section. No. 20, 1955.

(4) Every bailiff may, subject to the restriction hereinafter contained, by any writing under his hand, appoint a sufficient number of persons, not exceeding such number as may from time to time be allowed by the judge, to be officers to assist the bailiff; and the bailiff may dismiss any such officer and may appoint another in his stead, and the judge may dismiss or suspend any such officer.

(b) by inserting next after subsection one of section twenty-eight the following new subsection:— Sec. 28.
(Duties of
bailiffs.)

(1A) (a) The registrar of any district, if he is satisfied that for reasons of economy any summons or other process issued out of the District Court holden in that district that is to be served or executed outside that district may more conveniently be served or executed by the bailiff or by one of the bailiffs of that District Court or of any other District Court, may direct that the summons or other process be served or executed by the bailiff or by one of the bailiffs of the firstmentioned District Court or, as the case may be, of that other District Court notwithstanding that the summons or other process is to be served or executed outside the district of the firstmentioned District Court or, as the case may be, of that other District Court.

(b) The summons or other process may, in pursuance of that direction, be so served or executed notwithstanding anything elsewhere contained in this section.

(c)

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(c) The provisions of subsection two of this section do not apply to any summons or other process the subject of a direction under this subsection.

(d) Nothing in this subsection affects the operation of subsection three of section seven of this Act.

Further amendment of Act No. 23, 1912.

3. In respect of proceedings commenced in a District Court on or after the twelfth day of July, one thousand nine hundred and fifty-five, but before the twelfth day of July, one thousand nine hundred and fifty-eight, the District Courts Act, 1912, as amended by subsequent Acts, shall be deemed to be amended—

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

(a) (i) by inserting in subsection one of section forty-one after the word “shall” the words “, subject to this Part of this Act,”;

(ii) by omitting from the same subsection all words after the words “Supreme Court”;

Sec. 45.
(Decision as to amount or value.)

(b) by omitting from section forty-five the words “any of the four last preceding sections, or sections fifty-four, fifty-five, fifty-seven, or seventy-three, subsection one,” and by inserting in lieu thereof the words “sections forty-two, forty-three, forty-four, forty-six, fifty-four or seventy-three”;

Subst. sec. 46.

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

Actions where more than £1,000 claimed may be removed to Supreme Court.

46. (1) In any action brought in a District Court in respect of any claim or cause of action that is cognisable on the common-law side of the Supreme Court and in which—

(a) the property sought to be recovered exceeds one thousand pounds in value;
or

(b)

- (b) the amount claimed, whether on ^{No. 20, 1955.} balance of account or after an admitted set-off or otherwise, exceeds one thousands pounds,

the defendant, or any one of two or more defendants, may, within such time and in such manner as may be prescribed by rules of court, give notice that he objects to the action being tried in the District Court, and, where that notice is given, the judge shall order that the action be transferred to the Supreme Court.

(2) Where an order is made under subsection one of this section the registrar of the District Court in which the action was commenced shall forthwith transmit by post the whole record thereof, including the order for transfer, to the Prothonotary of the Supreme Court.

(3) After an action has been transferred to the Supreme Court under this section all proceedings therein shall, subject to any rules of court of that Court, be taken in that Court as if the action had been originally commenced therein.

- (d) (i) by omitting from section fifty-four the words "be entered under this Act" and by inserting in lieu thereof the words "have been entered under this Act as enacted immediately before the twelfth day of July, one thousand nine hundred and fifty-five,"; ^{Sec. 54. (Splitting demands.)}
- (ii) by omitting from the same section the words "be so entered" and by inserting in lieu thereof the words "have been so entered";

(e)

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Subst.
sec. 55.Splitting
debt by
giving
bills, etc.

- (e) by omitting section fifty-five and by inserting in lieu thereof the following section:—

55. In case any defendant has given two or more bills of exchange, promissory notes, bonds, or other securities for any debt or sum, the plaintiff may sue upon each of such securities as forming a distinct cause of action.

Sec. 57.
(Infants.)

- (f) by omitting from section fifty-seven the words “not exceeding one thousand pounds”;

New.
sec. 89A.

- (g) by inserting next after section eighty-nine the following new section:—

Jury may
be informed
of certain
matters.

89A. In any such action as is referred to in section forty-six of this Act (not being an action brought pursuant to section fifty-four of this Act) in which a jury is summoned, the plaintiff or his counsel or attorney may inform the jury that this Act does not impose any limit on the amount of damages that the jury may award to the plaintiff.

Further
amendment
of Act No.
23, 1912.Sec. 139.
(Judge of
Supreme
Court may
order
actions to
be tried in
a District
Court.)**4. The District Courts Act, 1912, as amended by subsequent Acts, is further amended—**

- (a) by omitting from paragraphs (a) and (b) of section one hundred and thirty-nine the word “two” wherever occurring and by inserting in lieu thereof the word “five”;
- (b) by inserting at the end of the same section the following new subsection:—

(2) Where, in any action brought on or after the twelfth day of July, one thousand nine hundred and fifty-five, but before the twelfth day of July, one thousand nine hundred and fifty-eight, in the Supreme Court (whatever may be the amount claimed), the whole or part of the demand of the plaintiff is contested, a judge of the Supreme Court at chambers may, on the application of all parties, after joinder of issue, order such action to be tried in such District Court as he thinks fit.

Provided

Provided that no order shall be made under No. 20, 1955. this subsection after the eleventh day of July, one thousand nine hundred and fifty-eight.

- (c) by inserting in subsection one of section one hundred and forty-one after the words “originally commenced therein” the words “and, in the case where the action was remitted under subsection two of section one hundred and thirty-nine of this Act, as if the action has been originally commenced therein before the twelfth day of July, one thousand nine hundred and fifty-eight.” Sec. 141. (When action remitted to District Court plaintiff to lodge original writ.)

5. The District Courts Act, 1912, as amended by subsequent Acts, is further amended— Further amendment of Act No. 23, 1912.

- (a) (i) by omitting from subsection one of section ninety-five the words “more than double the number required for the jury” and by inserting in lieu thereof the words “more than the number of jurors required for the impannelling of the jury pursuant to subsections two and three of this section”; Sec. 95. (Jury, how chosen.)
- (ii) by omitting from the same subsection the word “double” where secondly and thirdly occurring;
- (iii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) The registrar shall deliver a list containing the names of the said jurors to the plaintiff or his counsel or attorney by whom a number of such names equal to one-half of the jury to be impannelled may be struck therefrom and the list so reduced shall then be delivered to each defendant who is represented separately or his counsel or attorney by whom a number of names equal to one-half of the number of the jury to be impannelled may be also struck therefrom.

(b)

No. 20, 1955.

New sec.
149A.Power to
stay pro-
ceedings,
&c.

- (b) by inserting next after section one hundred and forty-nine the following new section:—

149A. (1) A judge of a District Court may, under and in accordance with rules of court, order that proceedings be stayed at any stage of the proceedings in any action or matter in the District Court.

Without prejudice to the generality of the foregoing provisions of this subsection the power conferred by this subsection to order a stay of proceedings includes power to order a stay of execution.

Nothing in this subsection shall be construed as limiting any power conferred on a judge of a District Court by any other provision of this Act to stay proceedings or to order proceedings to be stayed.

(2) The power conferred by section one hundred and fifty-two of this Act to make rules of court includes power to make rules of court with regard to District Courts for and in respect of—

- (a) the making of orders staying proceedings and executions;
- (b) the circumstances in which and the conditions upon which an application for a stay of proceedings or execution shall operate as a stay of proceedings or execution, as the case may be, until a judge of the District Court otherwise orders;
- (c) generally for carrying out or giving effect to the provisions of subsection one of this section.

Sec. 152.
(Rules of
court.)

- (c) by omitting from paragraph (a) of subsection three of section one hundred and fifty-two the words “after approval by the Attorney-General,”.

6. (1) The District Courts Act, 1912, as amended by No. 20, 1955. subsequent Acts, is further amended—

Further amendment of Act No. 23, 1912.

- (a) by omitting from section one hundred and two the words “or registrar of the said court, as the case may be” and by inserting in lieu thereof the words “of the said court”;
- (b) (i) by omitting from section one hundred and six the words “lands or goods” and by inserting in lieu thereof the words “lands and goods”;
- (ii) by omitting from the same section the words “registrar or”;
- (c) by omitting section one hundred and eight and by inserting in lieu thereof the following section:—

Sec. 102. (Registrar to issue writs of fieri facias.)

Sec. 106. (Priority of executions issuing out of district court.)

Subst. sec. 103.

108. (1) A bailiff of any District Court may, by himself or his deputies, to be by him appointed and duly authorised under his hand and seal, seize and take under any writ of execution whereby he is directed to levy any sum of money and may cause to be sold—

Bailiff to take under writ of execution.

- (a) all the goods, chattels, and other personal property of or to which the person named in the said writ is or may be possessed or entitled, or which he can, either at law or in equity, assign or dispose of:

Provided that—

- (i) wearing apparel;
- (ii) bedding;
- (iii) tools; and
- (iv) implements of trade,

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

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- (b) all the lands, tenements and hereditaments of or to which the person named in the said writ is seized or entitled, or which he can, either at law or in equity, assign or dispose of.

(2) A bailiff of a District Court acting pursuant to any such writ of execution—

- (a) shall, unless the debtor otherwise desires or in the bailiff's opinion it would be inadvisable, first sell the property that may be sold under paragraph (a) of subsection one of this section and then, if the proceeds thereof are insufficient to satisfy the execution, sell the property that may be sold under paragraph (b) of that subsection;
- (b) shall, before he makes sale of any property, diligently inform himself whether it would be best, with the view of obtaining the highest prices for the property, to cause the sale to be at the place of levy or elsewhere, and shall sell at the place where, in his judgment, those prices are most likely to be obtained.

(3) (a) Where the debtor alleges that his lands are more than sufficient to satisfy the execution, he may point out to the bailiff what part or parts he will have first sold, and that part or those parts shall be sold accordingly; but if that part or those parts is not or are not sufficient to satisfy the execution, the bailiff shall proceed to sell the whole of the lands, or such other parts thereof as are sufficient to satisfy the claim, including all costs.

(b) The like privilege shall belong to the debtor in respect of his personal estate taken, subject to the same condition as in paragraph (a) of this subsection.

(4)

(4) All property of every description taken in execution shall be put up for sale as early as may be with a due regard to the interests of all parties; but if the bailiff cannot effect an early sale of any property without a sacrifice of its reasonable value, he may delay the sale. No. 20, 1955.

(5) Where any property is to be put up for sale pursuant to any such writ, the bailiff shall cause notice of the writ and of the intended day and place of sale, and particulars of the property to be published in such manner as may be prescribed.

(d) by omitting from section one hundred and nine the words “; but instead of such seizure the registrar may cause notice of the writ and of the intended day and place of sale, and the particulars of the property, to be published in such manner as may be prescribed; and the publication of such notice shall be equivalent to an actual levy by the registrar on the land indicated by such notice” and by inserting in lieu thereof the words “The publication of the notice referred to in subsection five of that section shall be equivalent to an actual levy by the bailiff on the land indicated by the notice”; Sec. 109.
(Not necessary to make an actual seizure of lands under a fi. fa.)

(e) by omitting section one hundred and twelve. Sec. 112.
(Bailiff to seize personal property.)

(2) Notwithstanding anything contained in subsection one of this section, the provisions of the District Courts Act, 1912, as amended by subsequent enactments, other than this section, and the provisions of any rules of court as in force immediately before the commencement of this section under that Act, as so amended, shall continue to apply to any writ of execution issued before that commencement.

No. 20, 1955.

Amendment
of Act No.
33, 1912.
Sec. 69.
(Bailliffs.)

7. The Small Debts Recovery Act, 1912, as amended by subsequent Acts, is amended by omitting subsection one of section sixty-nine and by inserting in lieu thereof the following subsections:—

(1) For every court of petty sessions there shall be one or more bailiffs for the service and execution of the processes, orders and judgments authorised by this Act.

(1A) Where the Governor by proclamation in the Gazette so directs, every person for the time being holding office as, or discharging the functions of, sheriff's officer at any place or places specified in the proclamation shall be a bailiff of the court or courts of petty sessions held at that place or those places and of the court or courts of petty sessions held at such other place or places, if any, as may be specified in the proclamation.

The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this subsection.

(1B) The bailiff or bailiffs for each court of petty sessions, other than the bailiff or bailiffs referred to in subsection (1A) of this section, shall be appointed by the court of petty sessions.

The power conferred by this subsection and subsection two of this section may be exercised by a court of petty sessions notwithstanding that there may already be a bailiff or bailiffs of that court by virtue of any proclamation made under subsection (1A) of this section.

Saving.

8. (1) Any person appointed a bailiff or an officer to assist a bailiff under the District Courts Act, 1912-1953, and holding office immediately before the commencement of this section shall be deemed to have been appointed a bailiff or an officer to assist a bailiff, as the case may be, under the District Courts Act, 1912-1955.

(2) Any person appointed a bailiff under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and holding office immediately before the commencement of this section shall be deemed to have been appointed a bailiff under the Small Debts Recovery Act,

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