

DISTRICT COURT (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 1, 1975.

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

BE

District Court (Amendment).

No. 1, 1975 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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

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

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

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

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

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

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

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

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- (iv) by inserting in section 32 (4) after the matter No. 1, 1975 “(2)” the matter “, (2A)”;
- (v) by inserting in section 32 (5) after the matter “(2)” the matter “or (2A)”;
- (vi) by omitting section 32 (5) (a);
- (vii) by inserting after section 32 (5) the following subsections :—
- (6) Where a direction having effect, during a particular year, in respect of a particular proclaimed place is given under either of subsections (2) and (2A), a subsequent direction having effect, during that year, in respect of that proclaimed place may be given under the other of those subsections.
- (7) The operation of a direction given under either of subsections (2) and (2A) is not affected by, or by the giving of, a subsequent direction under the other of those subsections.
- (c) by omitting section 37 and by inserting instead the Sec. 37. following section :—
37. (1) A Judge in chambers may, in respect of ~~Chambers.~~ any proceedings, give any judgment or decision, or make any order, which he could lawfully give or make in court and which he considers may be properly given or made in chambers, whether those chambers are situated at the proper place in relation to those proceedings, at any other proclaimed place or elsewhere.
- (2) Where a Judge reserves his judgment or his decision on any question of fact or law, subsection (1) does not apply to or in respect of the judgment or decision, whether the judgment or decision is to be given after a hearing in court or in chambers.

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

(ii)

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- (ii) by inserting after section 51 (2) the following No. 1, 1975 subsection :—

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

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

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

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

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

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

(6) Nothing in this section affects—

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

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

- (k) (i) by inserting in section 76 after the word Sec. 76. “action” the words “commenced before the (Amount recover-able.) commencement of section 3 (k) of the District Court (Amendment) Act, 1975,”;

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

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

verdict

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

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

as the case may be.

Sec. 91.
(Examination
summons.)

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

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

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

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

as

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as to the judgment debtor's property and other means of satisfying the judgment debt and generally as to the judgment debtor's financial circumstances. **No. 1, 1975**

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 94A.

Report of certain examinations.

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

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

Sec. 96.

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

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

Sec. 103.

(Bank accounts.)

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

(4) Where—

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

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

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

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to retain the amount so paid for any specified period **No. 1, 1975**
not exceeding two months commencing on the date
of payment thereof.

(5) Where—

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

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

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

(a) until after—

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

part

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

(ii) the expiration of that period,

whichever first occurs; and

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

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

Sec. 105.
(Payment by
garnishee.)

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

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

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

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

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

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

(r)

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- (r) (i) by omitting from section 122 (3) the words "The rules" and by inserting instead the words "Without affecting the generality of section 161 (3), the rules"; **No. 1, 1975**
Sec. 122.
(Taxation of costs.)
- (ii) by omitting from section 122 (3) the word "otherwise" and by inserting instead the words "by reference to such other factors relating to the action as are specified in the rules";
- (s) (i) by omitting from section 124 the matter "\$100" wherever occurring and by inserting instead the words "the prescribed amount"; **Sec. 124.**
(Limitations on costs.)
- (ii) by inserting after section 124 (3) the following subsection :—
- (4) In this section, "prescribed amount" means—
- (a) in relation to an action commenced before the commencement of section 3 (s) of the District Court (Amendment) Act, 1975—\$100; or
- (b) in relation to an action commenced after the commencement of section 3 (s) of that Act—\$250.
- (t) by inserting after section 127 (5) the following subsection :— **Sec. 127.**
(Application to Supreme Court for new trial.)
- (6) This section does not apply to or in respect of a judgment after a trial without a jury in an action commenced after the commencement of section 3 (t) of the District Court (Amendment) Act, 1975.
- (u) (i) by inserting in section 128 (1) after the word "action" where secondly occurring the words "commenced before the commencement of section 3 (u) of the District Court (Amendment) Act, 1975"; **Sec. 128.**
(Appeal to Supreme Court.)

(ii)

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

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

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

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

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

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

Sec. 129.
(Agreement
not to
appeal.)

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

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

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

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

(ii)

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

"of—

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

as of right";

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

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

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

(y)

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No. 1, 1975
 Sec. 144.
 (Procedure
 on transfer.)

- (y) (i) by inserting in section 144 (1) (a) after the word "pleadings" the words "(if any)";
- (ii) by omitting from section 144 (1) (a) the words "those copies" and by inserting instead the words "that copy or those copies, as the case may be,";
- (iii) by inserting in section 144 (1) (a) after the word "lodge" where thirdly occurring the words "it or";
- (iv) by omitting from section 144 (1) (b) the word "copies" and by inserting instead the words "copy or copies, as the case may be, has or";
- (v) by omitting from section 144 (1) (b) (ii) the words "to try the issues raised by the pleadings";
- (vi) by inserting in section 144 (1) (c) (ii) after the word "pleadings" the words "(if any)";
- (vii) by inserting after section 144 (2) the following subsection :—

(3) Where proceedings become, by virtue of subsection (1) (b) (ii), an action in the Court—

- (a) the action shall, for the purposes only of section 76, be deemed to have been commenced at the time the proceedings so became an action and not at the time of the commencement of the proceedings in the Supreme Court; and
- (b) section 76 (2) applies to the action as if it had been brought for an amount for which it would have been authorised by this Act to be brought had the proceedings been commenced in the Court and not in the Supreme Court.

(z)

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- (z) by omitting section 150 (2) and by inserting instead the following subsection :— **No. 1, 1975**
 Sec. 150.
 (Regulations: Court fees.)
- (2) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (aa) (i) by inserting after section 161 (1) (a) the following paragraph :— **Sec. 161.**
 (Rules.)
- (ai) prescribing the extent to which, and the manner in which, the provisions of this Act and the rules shall apply to and in respect of proceedings pending immediately before the commencement of this Act in a District Court established under the District Courts Act, 1912;
- (ii) by inserting in section 161 (1) (l) after the words "evidence may be given" the words "(including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales)";
- (iii) by omitting section 161 (3) and by inserting instead the following subsection :—
- (3) Rules may be made so as to apply differently according to such factors as may be specified in the rules.
- (bb) by omitting from section 167 the words "Subject to section 194,"; **Sec. 167.**
 (Abolition of Courts of Quarter Sessions.)
- (cc) by omitting section 171 (4) and by inserting instead the following subsection :— **Sec. 171.**
 (Regulations: practice and procedure.)
- (4) Regulations may be made under this section so as to apply differently according to such factors as may be specified in the regulations.
- (dd)

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No. 1, 1975 (dd) by omitting section 175 and by inserting instead
the following section :—

Sec. 175.

Hearing of
appeals.

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

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

Sec. 179.
(Judges
to meet
and make
recommen-
dations.)

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

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

Sec. 194.

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

Pending
proceedings,
etc.

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

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

(3)

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(3) Where a question of law was submitted No. 1, 1975 by a Chairman of Quarter Sessions to—

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

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

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

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

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

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a reference to—

- (c) a former Court in existence before the commencement of this Act; and
- (d) a former Court continued in existence under the section which this section replaces.

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

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

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

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

Sec. 75A.
(Appeal.)

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

- (d) a trial—

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

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

in the District Court.

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

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

- (b) after a trial—

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

(ii)

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(ii) with a jury in an action commenced No. 1, 1975 after the commencement of that section, in the District Court.

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

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

(2)

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

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

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

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

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

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

PARLIAMENTARY